THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2014-000377

DRV FONTAINE, LLC, ... Respondent,

v.

FONTAINE BUSINESS PARK, LLC, FONTAINE BUSINESS PARK 2, LLC, FONTAINE BUSINESS PARK 3, LLC, FONTAINE BUSINESS PARK 4, LLC, FONTAINE BUSINESS PARK 5, LLC, FONTAINE BUSINESS PARK 6, LLC, FONTAINE BUSINESS PARK 7, LLC, FONTAINE BUSINESS PARK 8, LLC, FONTAINE BUSINESS PARK 9, LLC, FONTAINE BUSINESS PARK 10, LLC, FONTAINE BUSINESS PARK 11, LLC, FONTAINE BUSINESS PARK 12, LLC, FONTAINE BUSINESS PARK 13, LLC, FONTAINE BUSINESS PARK 14, LLC, FONTAINE BUSINESS PARK 15, LLC, FONTAINE BUSINESS PARK 16, LLC, FONTAINE BUSINESS PARK 17, LLC, FONTAINE BUSINESS PARK 18, LLC, FONTAINE BUSINESS PARK 19, LLC, FONTAINE BUSINESS PARK 20, LLC, FONTAINE BUSINESS PARK 21, LLC, FONTAINE BUSINESS PARK 22, LLC, FONTAINE BUSINESS PARK 23, LLC, FONTAINE BUSINESS PARK 24, LLC, FONTAINE BUSINESS PARK 25, LLC, FONTAINE BUSINESS PARK 26, LLC, FONTAINE BUSINESS PARK 27, LLC, FONTAINE BUSINESS PARK 28, LLC, FONTAINE BUSINESS PARK 29, LLC, FONTAINE BUSINESS PARK 30, LLC, and FONTAINE BUSINESS PARK 31, LLC, ... Appellants.

RECORD ON APPEAL
VOLUME I

Brent B. Young
Mark A. Fulks
100 Med Tech Parkway, Suite 200
Johnson City, Tennessee 37604
(423) 928-0181
Attorneys for Appellant
Fontaine Business Park, LLC

Tucker S. Player
1415 Broad River Road
Columbia, South Carolina 29210
(803) 772-8008
Attorney for Appellants
Fontaine Business Park 2-31, LLC

RECEIVED
FEB 0 9 2015
SC Court of Appeals

Robert L. Widener
Paul D. Harrill
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Attorneys for Respondent
DRV Fontaine, LLC

INDEX

VOLUME I

I. ORDERS

Order Granting Appointment of Receiver FBPAPP0001

Order Granting Plaintiff's Motion to Strike Jury Trial Demand FBPAPP0012

Order Denying Defendant Fontaine Business Park, LLC's Rule 59(e) Motion to Alter or Amend FBPAPP0021

II. PLEADINGS

A. Complaint, Answers, and Related Filings.

Complaint FBPAPP0024

Exhibit A , Loan Agreement FBPAPP0051

Exhibit B, Promissory Note FBPAPP0149

Exhibit C, Mortgage FBPAPP0156

Exhibit K,. Assignment and Assumption FBPAPP0177

Exhibit L, Assignment of Assignment FBPAPP0181

Exhibit M, Assignment of Mortgage FBPAPP0189

Exhibit N, Assignment and Assumption FBPAPP0197

Exhibit O, Assignment of Assignment FBPAPP0217

Exhibit P, Assignment of Mortgage FBPAPP0221

Answer, Affirmative Defenses, and Counterclaims of Fontaine Business Park, LLC FBPAPP0229

Answer and Counterclaims for Defendants Fontaine Business Park 2-31 ..... FBPAPP0271

Plaintiff's Reply to Affirmative Defenses and Counterclaims of Defendant Fontaine Business Park, LLC FBPAPP0312

Plaintiff's Reply to Affirmative Defenses and Counterclaims of Defendant Fontaine Business Park 2-31, LLC FBPAPP0325

Motion for Leave to File Supplemental Pleading FBPAPP0338

Supplemental Pleading FBPAPP0340

Plaintiff's Reply to Supplemental Pleading FBPAPP0344

Notice of Appeal FBPAPP0348

B. Plaintiff's Motion to Strike Jury Trial Demand of Defendants

Plaintiff's Motion to Strike Jury Trial Demand of Defendants with Exhibits FBPAPP0350

VOLUME II

Plaintiff's Motion to Strike, Cont FBPAPP0471

Memorandum in Opposition to Plaintiff's Motion to Strike Jury Demand with Exhibits FBPAPP0562

Notice of Motion Scheduling for the Motion to Strike Jury Trial Demand of Defendants FBPAPP0604

C. Motion for Appointment of Receiver

Motion for Appointment of Receiver. FBPAPP0605

Response in Opposition to the Motion for Appointment of Receiver FBPAPP0631

Defendant Fontaine Business Park, LLC's Rule 59(e) Motion to Alter or Amend FBPAPP0635

Defendant Fontaine Business Park, LLC's Memorandum of Facts and Law in Support of Defendant's Rule 59(e) Motion to Alter or Amend FBPAPP0639

Notice of Motion Scheduling for the Motion for Appointment of Receiver FBPAPP0726

D. Motion for Order of Reference

Motion for Order of Reference FBPAPP0727

Response in Opposition to the Motion for Order of Reference FBPAPP0734

Notice of Motion Scheduling for the Motion for Order of Reference FBPAPP0733

III. TRANSCRIPTS

Hearing on the Motion to Strike Jury Trial Demand FBPAPP0734

Hearing on the Motion for Appointment of Receiver and
Motion for Order of Reference. FBPAPP0761

Deposition of Paula Mathews and exhibits FBPAPP0849

Deposition of Elliott Liffman and exhibits FBPAPP0905

IV. EXHIBITS

Plaintiff's Responses to Written Discovery. FBPAPP0964

V. CERTIFICATE OF APPELLANTS COUNSEL. 970

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
DRV Fontaine, LLC, Plaintiff, v. Fontaine Business Park, LLC; Fontaine Business Park 2, LLC; Fontaine Business Park 3, LLC; Fontaine Business Park 4, LLC; Fontaine Business Park 5, LLC; Fontaine Business Park 6, LLC; Fontaine Business Park 7, LLC; Fontaine Business Park 8, LLC; Fontaine Business Park 9, LLC; Fontaine Business Park 10, LLC; Fontaine Business Park 11, LLC; Fontaine Business Park 12, LLC; Fontaine Business Park 13, LLC; Fontaine Business Park 14, LLC; Fontaine Business Park 15, LLC; Fontaine Business Park 16, LLC; Fontaine Business Park 17, LLC; Fontaine Business Park 18, LLC; Fontaine Business Park 19, LLC; Fontaine Business Park 20, LLC; Fontaine Business Park 21, LLC; Fontaine Business Park 22, LLC; Fontaine Business Park 23, LLC; Fontaine Business Park 24, LLC; Fontaine Business Park 25, LLC; Fontaine Business Park 26, LLC; Fontaine Business Park 27, LLC; Fontaine Business Park 28, LLC; Fontaine Business Park 29, LLC; Fontaine Business Park 30, LLC; Fontaine Business Park 31, LLC; Defendants.	)	Civil Action No: 2012-CP-40-7752 **ORDER APPOINTING RECEIVER**

RICHLAND COUNTY
FILED
2013 JUN -4 AM 10: 24
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on February 1, 2013, on the Motion for Appointment of a Receiver and the Motion for Order of Reference filed by Plaintiff DRV Fontaine, LLC

("Plaintiff"). Present at the hearing were Paul Harrill, Esquire, counsel for Plaintiff; Brent Young, Esquire, and Mark Fulks, admitted *Pro Hac Vice*, counsel for Defendant Fontaine Business Park, LLC ("Fontaine Business Park"); and Tucker Player, Esquire, counsel for Defendants Fontaine Business Park 2-31, LLC ("Fontaine Business Park 2-31"), (collectively "the Defendants"). This Court declined to hear Plaintiff's Motion for Order of Reference pending the resolution of the legal claims asserted in this matter. After considering the law, the briefs filed by the parties, the arguments of counsel, and other matters submitted, Plaintiff's Motion for Appointment of a Receiver is **GRANTED.**

FACTS

On or about December 14, 2007, Defendant Fontaine Business Park borrowed $16,300,000.00 from Greenwich Capital Financial Products, Inc. ("Greenwich Capital"). The Loan was evidenced by a Loan Agreement, dated December 14, 2007, which was executed and delivered to Greenwich Capital, [its successors and assigns], by Fontaine Business Park. The Loan was secured by a document entitled "Promissory Note, Mortgage, and Assignment of Leases and Rents and Security Agreement," recorded in the land records of Richland County, South Carolina, in Book 1384 at Page 3723 (collectively the "Mortgage"). The real property encumbered by the Mortgage consists of four office buildings known as Fontaine Business Park (the "Property"). The Loan is also evidenced and secured by an Assignment of Leases and Rents, recorded in the land records of Richland County in Book 1384 at Page 3744 (the "Assignment of Leases"), and an Assignment of Agreements, Licenses, Permits and Contracts (the "Assignment of Agreements"). The Loan is the subject of a Loan Assumption Agreement, in which various tenant-in-common investors assumed all obligations under the Loan Documents, jointly and severally, along with Fontaine Business Park. This Loan Assumption Agreement was recorded in the land records of Richland County in Book 1384 at Page 3763, and its amendments are recorded in Book 1399 at Page 3207. Defendants Fontaine Business Park 2-31 are those additional obligors who assumed the obligations set forth in the Loan Assumption Agreement and its amendments. The Note, Mortgage, Assignment of Leases, Assignment of Agreements, Loan Assumption Agreement and amendments, and all other documents related to the Loan are referred to as the "Loan Documents." On May 16, 2008, Greenwich Capital assigned the Loan Documents to the Royal Bank of Scotland PLC ("RBS"). On April 2, 2009, RBS assigned the Loan Documents to Plaintiff.

Among other things, the Loan Agreement requires Defendant Fontaine Business Park to make monthly contributions to various reserve accounts that are to be held as custodial accounts by Plaintiff for the benefit of Fontaine Business Park and the Property. The reserve accounts include a Capital Expense Reserve, a Rollover Reserve, and a Tax and Insurance Account. The Loan Agreement established a monthly contribution of $5,249.00 for the Capital Reserve Account; $21,086.50 for the Rollover Reserve Account; and one-twelfth of the estimated tax and insurance expenses for the Tax and Insurance Account. Section 3.4 of the Loan Agreement authorizes Plaintiff to reassess the monthly contributions to the Capital Reserve Account "from time to time in its reasonable discretion (based upon its then current underwriting standards)." Section 3.5 of the Loan Agreement further authorizes Plaintiff to increase monthly contributions to the Rollover Reserve Account "if [Plaintiff] determines in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses." Section 3.3.1 of the Loan Agreement provides that Plaintiff may increase the monthly contributions to the Tax and Insurance Account if it "determines in its reasonable judgment that the funds in the Tax and Insurance Account will be insufficient to pay (or in excess of) the Taxes or Insurance Premiums next coming due."

According to the Affidavit of Elliot M. Liffman, manager of RCC Asset Management Company, LLC, Plaintiff's manager, Plaintiff requested a projected budget (the "Capital Budget") from Defendants on multiple occasions between September 2010 and May 2011. Liffman stated that as early as December 2010, Defendants' onsite property manager, Gullane I, LLC d/b/a CBRE Columbia ("CB Richard Ellis") advised Plaintiff it had submitted the Capital Budget to Defendants for review and was awaiting their approval before releasing it to Plaintiff. In May 2011, CB Richard Ellis released the Capital Budget to Plaintiff. Defendants claim they did not approve the Capital Budget. Mr. Liffman states that the Capital Budget reflected the capital needs for three years for repairs, replacements, and construction of tenant improvements for existing and projected vacant spaces within the Property. Plaintiff claims costs in the Capital Budget were substantially greater than existing and projected balances in the reserve accounts.

On July 11, 2011, Plaintiff provided notice to Defendants' representative of an increase in the amount of monthly payments required for the reserve accounts in order to cure the alleged shortfalls projected in the Capital Budget. The reassessed amount of the monthly contribution to the Capital Reserve Account increased from $5,249.00, the amount at inception of the Loan

Documents, to $54,476.34. Plaintiff also reassessed the monthly contribution to the Rollover Reserve Account from $21,086.50 to $159,472.91. The Rollover Account is required to have a minimum balance of $250,000.00.

From September to December 2011, Defendants paid four months of increased monthly contributions into the reserve accounts, or approximately $736,000.00, while continuing to contest the reasonableness of the reassessments. In January 2012, Defendants stopped making the increased monthly payments and began making payments of $5,249.00 into the reserve accounts. Plaintiff objected to payment of the reduced amount and claimed Defendants breached the Loan Agreement. On April 1, 2012, Plaintiff advised CB Richard Ellis of an increase in the required monthly contributions into the Tax and Insurance Account from $722.00 to $5,272.97. Defendants paid the increased contributions to the Tax and Insurance Account in April, May, and June 2012. However, in July 2012, Defendants returned to paying $722.00 into the Tax and Insurance Account. Plaintiff claims the amount Defendants paid into the Tax and Insurance Account is insufficient and Defendants are not permitted to reduce their payments into the Capital Reserve Account, Rollover Reserve Account, or Tax and Insurance Account without Plaintiff's consent under the Loan Agreement.

On July 27, 2012, Plaintiff provided notice to Defendants that failure to pay the increased amount into the reserve accounts within ten days would constitute an event of default pursuant to the Loan Agreement. Defendants responded, reasserting that the amount of the increased contributions was unreasonable and unsubstantiated and that there was never a deficiency in the reserve accounts. Defendants did not make the increased payments into the reserve accounts and Plaintiff accelerated the entire debt and applied the default rate of interest to the entire unpaid debt. Plaintiff further demanded, pursuant to Section 5.12.2 of the Loan Agreement, that the current management agreement for the Property be terminated and Fontaine Management, LLC, the property manager under that agreement, be replaced with a manager acceptable to Plaintiff. Plaintiff also terminated Defendants' license to continue to collect rents and profits generated by the Property and directed that those funds be held by the onsite manager, CB Richard Ellis.

Plaintiff further alleges Defendants failed to pay the debt servicing payment for October 2012 and November 2012, which also constituted events of default. Defendants claim they notified Plaintiff they were entitled to a credit to be applied to the debt servicing payments

because Defendants previously paid increased monthly contributions to Plaintiff and Plaintiff was in possession of excess funds in the amount of $550,424.00.

On November 20, 2012, Plaintiff filed a Summons, Complaint, and Lis Pendens. On November 21, 2012, Plaintiff filed this Motion for Appointment of a Receiver. In their Motion, Plaintiff claims Defendants are in default under the Loan Agreement for failing to make increased payments into the reserve accounts and failing to make any payment on the Loan balance in the months of October 2012 and November 2012. As a result of the default, Plaintiff claims it is entitled to all rents and profits generated by and associated with the Property. Plaintiff alleges Defendants failed to comply with the termination of their right to collect rents and profits and also failed to direct CB Richard Ellis to hold the rents and profits. On December 3, 2013, Defendants filed an Answer including Affirmative Defenses and Counterclaims and disputing the existence of an event of default.

DISCUSSION

Plaintiff seeks appointment of a receiver pursuant to the provisions of the Loan Documents and S.C. Code Ann. § 15-65-10, *et seq.* for the purpose of collecting and distributing the rents, accounts receivable, and profits from the Property in accordance with the terms of the Mortgage and Assignment of Leases. Plaintiff seeks to pay the receiver's fees and costs from any rents received and collected. Plaintiff seeks receivership for the duration of the foreclosure action, ending on the date of the issuance of a foreclosure deed to the Property or a court order terminating the receivership, whichever occurs first. Plaintiff argues it is entitled to a receiver because: (1) Defendants failed to pay debt servicing payments in October 2012 and November 2012; (2) Defendants failed to pay the increased monthly payments into the Taxes and Insurance Account, Capital Expense Reserves, and Rollover Reserves; and, (3) the rents or profits from the Property are in danger of being lost or materially injured or impaired pursuant to S.C. Code Ann. § 15-65-10. This Court finds Plaintiff is entitled to a receiver on the sole basis that Defendants failed to pay debt servicing payments in October 2012 and November 2012.

1. **Failure to Pay Debt Servicing Payments**

Plaintiff claims Defendants are in default under the terms of the Loan Documents for failure to pay debt servicing payments in October 2012 and November 2012, and as a result of the default, Plaintiff is entitled to collect all rents and profits generated by the Property. Section 8.1 of the Loan Agreement states that an "Event of Default" occurs if "any portion of the Debt is

not paid when due." Plaintiff alleges that pursuant to the terms of the Mortgage, Fontaine Business Park consented to the appointment of a receiver in the event of default. Paragraph 10 of the Mortgage contains the following language:

> Remedies.
>
> (a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property . . . including . . . :
>
> > (viii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of security for the Debt and without regard for the solvency of the Mortgagor or of any person, firm or other entity liable for the payment of the Debt.

Defendants claim the appointment of a receiver is not appropriate because Plaintiff has not established an event of default, all payments due under the Loan Documents are current, and Defendants have otherwise complied with all obligations under the Loan Documents. "The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989); *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957).

This Court finds Plaintiff is entitled to the appointment of a receiver under the express language of the Loan Documents. Defendants' failure to pay the debt service payments for October 2012 and November 2012 constituted events of default, whereby Plaintiff is entitled to protect its rights in the Property by seeking the appointment of a receiver. Defendants claim they are not in default for failing to make the debt service payments because Plaintiff was in possession of excess funds as a result of the reassessments. Defendants claim they are entitled to a refund of the improper payments to the reserve accounts or to have the excess funds in the reserve accounts credited to the debt service payments. Despite Defendants' contentions that the reassessed monthly contributions were unreasonable, there is no specific provision in the Loan Agreement that would allow Defendants to apply money previously paid into the reserve accounts to a debt service payment. Therefore, Defendants' failure to make payments for

ad #6

October 2012 and November 2012 constituted events of default and Plaintiff is entitled to the appointment of a receiver pursuant to the terms of the Loan Documents.

2. Failure to Make Increased Monthly Contributions into the Reserve Accounts

Plaintiff further claims Defendants' failure to make increased monthly contributions into the reserve accounts constituted an event of default, entitling Plaintiff to seek the appointment of a receiver. Defendants claim they are not in default because the amount of the increased monthly contributions was unreasonable and unsubstantiated. Plaintiff is authorized to increase the monthly contributions to the Rollover Reserve Account "if [Plaintiff] determines in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses." Although Plaintiff claims it increased monthly contributions to the Rollover Reserve Account based on reasonable judgment, Plaintiff has not established that failure to pay increased amounts to the Rollover Reserve Account constituted an event of default pursuant to the Loan Agreement. Therefore, Plaintiff is not entitled to appoint a receiver on the basis that Defendants failed to make increased contributions to the Rollover Reserve Account.

Plaintiff is authorized to reassess the monthly contributions to the Capital Reserve Account in its reasonable discretion "based upon its then current underwriting standards." According to testimony at the hearing, when Plaintiff received the Capital Expense Budget from the property manager CB Richard Ellis, it realized the reserve accounts would be depleted by the projected expenses. Therefore, Plaintiff increased the monthly contributions to the Capital Reserve Account. Defendants claim they requested that Plaintiff substantiate the increased contributions under the current underwriting standards. Plaintiff claims that because Defendants' property manager, CB Richard Ellis, submitted the Capital Expense Budget, all parties understood that the reassessments were based upon that Budget. There appears to be a dispute as to whether the monthly contributions to the Capital Reserve Account were actually reassessed using current underwriting standards. Plaintiff has not provided evidence that the monthly contributions to the Capital Reserve Account were reassessed under current underwriting standards or that Defendants' failure to pay the increased amounts constitutes an event of default. Therefore, Plaintiff is not entitled to a receiver on this basis.

The Loan Agreement further provides that Plaintiff may increase the monthly contributions to the Tax and Insurance Account if it "determines in its reasonable judgment that

the funds in the Tax and Insurance Account will be insufficient to pay (or in excess of) the Taxes or Insurance Premiums next coming due." On June 11, 2012, Ronald Guerena, Vice President of Marsh Risk & Insurance Services, wrote Plaintiff and stated he estimated the monthly payment for insurance on the location would be, at most, $3,100.00 per month. Plaintiff increased the monthly payment from $722.00 to $5,272.00 per month. Plaintiff has not established that Defendants' failure to pay the increased amount into the Tax and Insurance Account constituted an event of default under any provision in the Loan Documents. Therefore, Plaintiff is not entitled to a receiver on this basis.

3. S.C. Code Ann. § 15-65-10

Plaintiff claims it is entitled to a receiver pursuant to S.C. Code Ann. § 15-65-10, which provides in part, "[a] receiver may be appointed by a judge of the circuit court, either in or out of court: (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court." S.C. Code Ann. § 15-65-10. Paragraph 2 of the Mortgage provides:

> Mortgagor hereby grants and assigns to Mortgagee the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem appropriate.

According to the affidavit of Elliot Liffman, Defendants continue to exercise control over the rents and profits and failed or refused to comply with the termination of their rights to collect rents and profits or to direct CB Richard Ellis to hold the rents and profits. At the hearing, Plaintiff alleged that, upon review of the cash flow statements for November 2012 and December 2012, CB Richard Ellis made at least one disbursement in December 2012 for a "Legal Expense" to an unknown source in the amount of $32,922.90, to which Plaintiff objects. Plaintiff also testified that it was doubtful that the rents and profits currently collected would meet the amount required for payments to the reserve accounts and to pay expenses. Without further evidence, it is speculative whether the rents and profits from the Property are in danger of being lost or

materially injured or impaired. For this reason, Plaintiff is not entitled to the appointment of a receiver pursuant to Section 15-65-10.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Plaintiff DRV Fontaine, LLC's Motion for Appointment of a Receiver is **GRANTED.**

IT IS THEREFORE ORDERED:

1. A Receiver is hereby appointed to take possession of the Property and to perform the acts and functions that are more particularly hereinafter set forth, with such appointment to be effective upon Order of the Court. The names of three persons or entities suitable to perform the duties of Receiver shall be presented separately by the Plaintiff and Defendants to the Chief Administrative Judge within ten (10) days. The Chief Administrative Judge shall select the Receiver who shall serve pursuant to the terms of this Order, unless otherwise agreed upon by the parties.
2. The Receiver is directed to demand and take over from Fontaine Business Park and/or any agent acting for Fontaine Business Park, all funds on hand, including all rents and profits, bank accounts, and all books of account and any and all other financial records of every character relating to the rents, profits, issues, and expenses of the Property.
3. Defendant Fontaine Business Park and its agents, servants, and employees are ordered to cooperate with the Receiver and appear at such times as may be required to sign such documents as may be necessary to evidence the Receiver's rights, powers, and entitlements with regard to the Property as herein provided, and are ordered to furnish such records and other information as the Receiver may require, and execute such documents as are necessary or convenient for the continued operation of the Property.
4. The Receiver is authorized to offer for rent or lease such portions of the Property as are available for such periods of time as may be within or extend beyond the period of the Receivership, and to collect all rentals and profits, including revenues, deposits, accounts, cash, issues, charges for services rendered, and other consideration of whatever form received by or paid to or for the account or benefit of Fontaine Business Park or its agents or employees from any and all sources arising from or attributable to the Property.
5. The Receiver is authorized to disburse such funds as may be required from time to time for the management, maintenance, and upkeep of the Property.

6. The Receiver is directed to use all reasonable efforts to obtain maximum revenue for the Property and to operate the Property while protecting the assets of the Property. For this purpose, the Receiver may employ the services of management companies or agents.
7. The Receiver is authorized to employ, discharge, supervise, and pay, on behalf of the Receivership estate all brokers, attorneys, accountants, servants, managing agents, employees, or maintenance and/or service personnel considered by the Receiver to be necessary for the efficient management of the Property.
8. The Receiver is further authorized and required to perform or cause to be performed all services, in addition to the foregoing, necessary for the management of the Property, including institution of legal actions in the name of and at the expense of the Receivership estate to enforce the collection of rents, charges, and fees.
9. The Receiver is directed, on behalf of the Receivership estate, to procure or maintain, at the expense of the Receivership estate, insurance for the protection for Receiver, the owner of the Property, the Plaintiff, and any other mortgage creditors and lien claimants.
10. The Receiver shall file with the Clerk of Court and forward to counsel for the parties monthly accountings certified by the Receiver to be accurate, reflecting all receipts and disbursements made during the preceding accounting period, applicable to the management of the Property.
11. The compensation of the Receiver shall be set by the Court upon presentation of evidence to demonstrate an appropriate rate of compensation.
12. The Court finds that Plaintiff is entitled to payment of all rents and profits, and proceeds, after payment of operational expenses, including the Receiver's monthly compensation at the rate set forth by the Court. The payment of such net income realized from the Property shall be applied, in the sole discretion of Plaintiff, as a credit against the outstanding balance owed under the Note.

ad #10

13. The Receiver may apply to this Court for further and other instructions and for such further power as may be necessary to enable the Receiver to properly carry out the terms of this Order and fulfill its duties as Receiver.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
June 3, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC,

Plaintiff,

v.

FONTAINE BUSINESS PARK, LLC;
FONTAINE BUSINESS PARK 2, LLC;
FONTAINE BUSINESS PARK 3, LLC;
FONTAINE BUSINESS PARK 4, LLC;
FONTAINE BUSINESS PARK 5, LLC;
FONTAINE BUSINESS PARK 6, LLC;
FONTAINE BUSINESS PARK 7, LLC;
FONTAINE BUSINESS PARK 8, LLC;
FONTAINE BUSINESS PARK 9, LLC;
FONTAINE BUSINESS PARK 10, LLC;
FONTAINE BUSINESS PARK 11, LLC;
FONTAINE BUSINESS PARK 12, LLC;
FONTAINE BUSINESS PARK 13, LLC;
FONTAINE BUSINESS PARK 14, LLC;
FONTAINE BUSINESS PARK 15, LLC;
FONTAINE BUSINESS PARK 16, LLC;
FONTAINE BUSINESS PARK 17, LLC;
FONTAINE BUSINESS PARK 18, LLC;
FONTAINE BUSINESS PARK 19, LLC;
FONTAINE BUSINESS PARK 20, LLC;
FONTAINE BUSINESS PARK 21, LLC;
FONTAINE BUSINESS PARK 22, LLC;
FONTAINE BUSINESS PARK 23, LLC;
FONTAINE BUSINESS PARK 24, LLC;
FONTAINE BUSINESS PARK 25, LLC;
FONTAINE BUSINESS PARK 26, LLC;
FONTAINE BUSINESS PARK 27, LLC;
FONTAINE BUSINESS PARK 28, LLC;
FONTAINE BUSINESS PARK 29, LLC;
FONTAINE BUSINESS PARK 30, LLC;
FONTAINE BUSINESS PARK 31, LLC;

Defendants.

RICHLAND COUNTY FILED
2014 JAN 27 PM 2 14
JEANETTE W. WALKER C.C.P. & G.S.

ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE JURY TRIAL DEMAND

SCANNED

This matter came before the Court upon the plaintiff, DRV Fontaine, LLC's ("DRV's"), motion to strike the defendants' demand for a jury trial. DRV seeks an order striking the jury demand, returning the case to the non-jury docket, and referring this foreclosure case to the Master in Equity for Richland County. DRV asserts that its motion should be granted because (1) the Defendants expressly waived their right to a jury trial, and (2) the Defendants' defenses and counterclaims do not, in any event, change the equitable nature of the foreclosure action. The Court agrees and grants the motion for the reasons set forth more fully below.

This is a mortgage foreclosure action. A mortgage foreclosure is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 489 S.E.2d 472, 475 (S.C. S. Ct. 1997); *Collier v. Green*, 137 S.E.2d 277, 279 (S.C. 1964). There is no right to a trial by jury for equitable actions. *Mortgage Electronic Systems, Inc. v. White*, 682 S.E.2d 498, 502 (S.C. Ct. App. 2009).

Defendants expressly waived their right, if any, to a jury trial in the loan documents.

A party to a lawsuit may expressly waive their rights, if any, to a jury trial with regard to any defense or counterclaim.

> A party may waive the right to a jury trial by contract. *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992). Such a waiver must be strictly construed as the right to trial by jury is a substantial right. *Id.* However, terms in a contract provision must be construed using their plain, ordinary and popular meaning. *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994).
>
> The waiver provision in the lease plainly provides that in any claim asserted by Twillman, "trial by jury shall be waived by both parties." We find the clause is a valid waiver of Twillman's right to a jury trial.
>
> *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002)

In this equitable foreclosure case, the original Borrower, Defendant Fontaine Business Park, LLC ("Original Borrower"), and the original lender signed a Loan Agreement, which is attached to the Complaint and was submitted as Exhibit A to the motion. Section 2 of the Loan

GE 2

Agreement on page 17 reflects that this was a loan for $16,300,000. The Loan Agreement contains the following language at Section 10.8:

> 10.8 **Trial by Jury.** EACH BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

The Original Borrower and the original lender also executed a Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") to secure the loan. The Mortgage is attached to the Complaint and was submitted as Exhibit B to the motion. The Mortgage contains the following language at paragraph 22:

> 22. **Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.
>
> INITIALS: s/

Twenty six of the remaining defendants, Fontaine Business Park 2-24, 26, and 28, LLC (the "First Additional Borrowers"), purchased interests in the mortgaged property and each

GL 3

agreed to assume the obligations of the Original Borrower in the loan documents jointly with the Original Borrower. The lender agreed to the purchase and assumption by the First Additional Borrowers as is reflected in the Loan Assumption Agreement, which is attached to the Complaint and was submitted as Exhibit C to the motion. Pursuant to paragraph 1 on page 2 of the Loan Assumption Agreement, each of the First Additional Borrowers agreed as follows:

> 1. Assumption of Obligations. Additional Borrower hereby assumes, on a joint and several basis with Original Borrower and any and all other tenants-in-common that have previously assumed the Loan, all of Original Borrower's obligations and agreements under the Loan Agreement, the Note, the instrument, the Lease Assignment and all of the other Loan Documents; . . . all of the recitals, terms, waivers and conditions of which are incorporated herein by this reference, to the same extent and with the same effect as if Additional Borrower were an original party to each of such Loan Documents together with Original Borrower. All references to "Borrower" or "TIC Borrower" in the Loan Agreement, the Note, the Instrument and the other Loan Documents, "Assignor" in the Lease Assignment (but again excluding the Guaranty of recourse Obligations) shall include additional Borrower.

The five remaining defendants Fontaine Business Park 25, 27 and 29-31, LLC (the "TIC Borrowers") purchased interests in the property and each agreed to assume the obligations of the Original Borrower in the loan documents jointly with the First Additional Borrowers and Original Borrower. The lender agreed to the purchase and assumption by the TIC Borrowers as is reflected in the First Amendment to Loan Assumption Agreement, which is attached to the Complaint and was submitted as Exhibit D to the motion. Pursuant to paragraph 1 on page 2 of the First Amendment to Loan Assumption Agreement, each of the TIC Borrowers agreed as follows:

> 1. Assumption of Obligations.
>
> A. Each TIC Borrower undersigned below hereby assumes, on a joint and several basis with the Original Borrower and all other Tenants-in-common that have previously assumed the Loan, all of Original Borrower's obligations and agreements under the Loan Agreement, the Note, the Instrument, the Lease Assignment and all of the other Loan Documents; . . . all of the recitals, terms, waivers and conditions of which are incorporated herein by this reference, to the

same extent and with the same effect as if each TIC Borrower were an original party to each of such Loan Documents together with Original Borrower. All references to "Borrower" or "TIC Borrower" in the Loan Agreement, the Note, the Instrument and the other Loan Documents, "Assignor" in the Lease Assignment (but again excluding the Guaranty of recourse Obligations) shall include Each TIC Borrower.

The Additional Borrowers and the TIC Borrowers shall collectively hereinafter be referred to as the "Additional Borrowers."

As set forth above and in the loan documents, the written jury waiver clauses in the Mortgage and Loan Agreement are conspicuous and unambiguous. They are printed in all capital letters. The waivers contained in the Mortgage and the Loan Agreement are not buried within the language of other provisions. Rather, the waivers are contained in separate conspicuous paragraphs with the bold, underlined headings, "**Waiver of Jury Trial**" and "**Trial by Jury**," respectively.

By signing the Loan Agreement and Mortgage and/or by expressly assuming all waivers contained therein by signing the loan assumption agreements, each and every Defendant waived its right to a jury trial with regard to the loan documents and "ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH." Therefore, Defendants knowingly and expressly waived the right to a jury trial as to each of the defenses and counterclaims raised in their pleadings. The waiver contained in the Mortgage actually contains borrowers' initials immediately beneath the waiver – indicating their express and knowing assent to the waiver.

In any event, the Defendants cannot avoid the express waivers in the Loan Agreement, the Mortgage and the Assumption Agreements, by simply arguing they were not knowing and voluntary. By signing the loan documents, the Defendants are charged with having read their

contents, and therefore, they cannot avoid their effects by arguing they were unaware of the inclusion of the conspicuous jury waivers.

> A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct.App.2003). A person signing a document is responsible for reading the document and making sure of its contents. *Id.* Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. *Id.* One who signs a written instrument has the duty to exercise reasonable care to protect himself. *Id.* at 665, 582 S.E.2d at 440. The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document. *Id.*

Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 457-58 (Ct. App. 2011), reh'g denied (Oct. 21, 2011) (specifically addressing jury waiver clauses).

Based upon the fact that Defendants knowingly and expressly waived their rights, if any, to a jury trial as to all claims and counterclaims, DRV's motion to strike Defendants' jury demand is hereby granted.

<u>Defendants' counterclaims do not change the equitable nature of the foreclosure action.</u>

Even without the express jury trial waivers, Defendants would not be entitled to a jury trial in this equitable foreclosure action. *Collier v. Green*, 244 S.C. 367, 371, 137 S.E.2d 277, 280 (1964) discusses at length the effect defenses and counterclaims have on an equitable foreclosure action. In *Collier v. Green*, the South Carolina Supreme Court held:

> Nor is the nature of the action changed by reason of the fact that the defendants have, in their answers, set up defenses and counterclaims based upon alleged misrepresentations in the transaction upon which the plaintiff's note and pledge are predicated. The questions raised by these defenses and counterclaims directly affect the validity of the plaintiff's lien and the question as to the amount due upon the debt secured by the lien. Where, in actions of foreclosure, defendant sets up a defense and/or a counterclaim affecting the consideration, and arising out of the transaction in which the mortgage or lien was created, the authorities hold that the issues thus raised are equitable and are to be tried by the court upon its equity side. *Hunt v. Nolen*, 46 S.C. 551, 553, 24 S.E. 543; *McLaurin v. Hodges*, 43 S.C. 187, 20 S.E. 991; *Armour Fert. Works v. Burckhalter*, 141 S.C. 232, 237, 139 S.E. 465; *Mobley Co. v. McLucas*, 99 S.C. 99, 82 S.E. 986.

GTC 6

Collier v. Green, 244 S.C. 367, 371, 137 S.E.2d 277, 280 (1964)

In the present case the defenses and counterclaims essentially allege that Plaintiff "created" an event of default and the foreclosure is, therefore, invalid. Pursuant to the holding in *Collier v. Green* and the cases discussed therein, such claims and defenses do not change the equitable nature of the foreclosure action.

At the hearing, Defendants relied heavily upon the case of *Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 457-58 (S.C. Ct. App. 2011), reh'g denied (Oct. 21, 2011) in arguing that their counterclaims are legal in nature and, therefore, create a right to a jury trial as to the counterclaims. Defendants' reliance upon the *Blackburn* case is misplaced. In the first instance, the *Blackburn* case is distinguishable from the present case in that the jury waiver in *Blackburn* did not include "counterclaims." The Court of Appeals found that the jury waivers were enforceable but emphasized the fact that "[j]ury trial waivers are a substantial right and must be strictly construed." *Id.* at 460.

The Court of Appeals ultimately held that the jury waiver clauses were not valid as to some of the defendant's counterclaims because those counterclaims were not based upon nor did they arise out of the note. *Id.* Those counterclaims alleged that the bank engaged in *pre-loan* fraud with the seller of the property that Blackburn ultimately purchased and the bank financed. As a result, the Court of Appeals held the counterclaims alleging fraud in the "sales contract" that was "executed months prior to the note" did not arise out of the note or loan documents.

In stark contrast to *Blackburn*, the Defendants' counterclaims in this foreclosure action arise directly out of the loan documents. Defendants' counterclaims allege that DRV failed to follow the proper procedures set forth in the loan documents for increasing the reserve accounts Defendants are required to maintain for the real estate collateral. Defendants admit that DRV has the right to increase the reserve account payments (See paragraphs 117 - 130 of Original

Borrower's counterclaims, and paragraphs 100 - 112 of Additional Borrowers' counterclaims; see also, sections 3.3, 3.4 and 3.5 of the Loan Agreement). However, Defendants allege that DRV essentially created an event of default by increasing the reserves unreasonably in violation of the terms of the Loan Agreement. Defendants' counterclaims clearly arise out of the loan documents and simply relate to whether there has been a default under the loan documents. As set forth in *Collier v. Green*, that type of counterclaims do not change the equitable nature of the foreclosure action.

Defendants argued that their counterclaims are not simply challenging the validity of the default alleged by DRV. As evidence of this Defendants argued that they are suing DRV and seeking significant damages. Upon closer examination, it does not appear that Defendants' counterclaims are legal in nature, nor do they seek any significant or specified damages. Original Borrower and Additional Borrowers fail to state any specific damages they seek against DRV. Each of the counterclaims asserted by Defendants seek "damages against DRV . . . in an amount to be proven at trial."

Additionally, Defendants were unable or unwilling to specify any damages they are claiming in response to DRV's discovery requests. DRV asked Original Borrower and Additional Borrowers to "set forth an itemized statement of all damages claimed to have been sustained by the parties as a result of any actions by DRV." Original Borrower responded by objecting to the request, then stated the "damages are adequately set forth in the pleadings," and that it "does not currently have an itemized statement of damages." Additional Borrowers responded in June 2013 by stating that "these Defendants are in the process of evaluating the Fontaine Business Park to determine its market value and will update this response once such analysis is done." No such update has been provided.

Defendants' counterclaims relate directly to the loan documents and the validity of DRV's claim that an event of default has occurred. Therefore, the counterclaims do not change the equitable nature of the foreclosure action, and Defendants are not entitled to a jury trial, even if they had not signed express waivers of their right to a jury trial. Therefore, DRV's motion to strike Defendants demand for a jury trial is hereby granted.

IT IS THEREFORE ORDERED that Defendants' demand for a jury trial is stricken, this case should be restored to the non-jury docket, and the case should be referred to the Master-in-Equity for Richland County pursuant to Rules 71 and 53 SCRCP.

It is so ordered this 27th day of January, 2014.

G. Thomas Cooper, Jr.
Presiding Circuit Court Judge

Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGML IN A CIVIL CASE

CASE NUMBER: 2012CP4007752

DRV Fontaine LLC

PLAINTIFF(S)

Fontaine Business Park LLC
Fontaine Business Park 2 LLC

DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Paul D. Harrill

Brent B. Young
W. Duvall Spruill

Tucker S. Player

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

FBPAPP-0021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-7752

DRV Fontaine, LLC	Fontaine Business Park, LLC, et al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

RICHLAND COUNTY FILED JANETTE W. McBRIDE C.C.P.&G.S. 2013 SEP 23 PM 3:39

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend the Order dated June 4, 2013 is denied.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** 2118 **Date** September 20, 2013

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of Sept, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Paul D. Harrill
Tucker Player

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brent B. Young
Mark A. Fulks

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCANN

SCRCP Form 4C (10/2011)

Brent B. Young
PO Box 3038
Johnson City, TN 37602

RECEIVED

SEP 26 2013

Baker, Donelson, Bearman
Caldwell & Berkowitz

CP14

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-_____

DRV FONTAINE, LLC,

Plaintiff,

v.

FONTAINE BUSINESS PARK, LLC;
FONTAINE BUSINESS PARK 2, LLC;
FONTAINE BUSINESS PARK 3, LLC;
FONTAINE BUSINESS PARK 4, LLC;
FONTAINE BUSINESS PARK 5, LLC;
FONTAINE BUSINESS PARK 6, LLC;
FONTAINE BUSINESS PARK 7, LLC;
FONTAINE BUSINESS PARK 8, LLC;
FONTAINE BUSINESS PARK 9, LLC;
FONTAINE BUSINESS PARK 10, LLC;
FONTAINE BUSINESS PARK 11, LLC;
FONTAINE BUSINESS PARK 12, LLC;
FONTAINE BUSINESS PARK 13, LLC;
FONTAINE BUSINESS PARK 14, LLC;
FONTAINE BUSINESS PARK 15, LLC;
FONTAINE BUSINESS PARK 16, LLC;
FONTAINE BUSINESS PARK 17, LLC;
FONTAINE BUSINESS PARK 18, LLC;
FONTAINE BUSINESS PARK 19, LLC;
FONTAINE BUSINESS PARK 20, LLC;
FONTAINE BUSINESS PARK 21, LLC;
FONTAINE BUSINESS PARK 22, LLC;
FONTAINE BUSINESS PARK 23, LLC;
FONTAINE BUSINESS PARK 24, LLC;
FONTAINE BUSINESS PARK 25, LLC;
FONTAINE BUSINESS PARK 26, LLC;
FONTAINE BUSINESS PARK 27, LLC;
FONTAINE BUSINESS PARK 28, LLC;
FONTAINE BUSINESS PARK 29, LLC;
FONTAINE BUSINESS PARK 30, LLC;
FONTAINE BUSINESS PARK 31, LLC;

Defendants.

COMPLAINT

(FORECLOSURE)

(DEFICIENCY DEMANDED)

(NON-JURY)

2012 NOV 20 PM 3:17

Now comes the Plaintiff, complaining of the Defendants above-named, would respectfully allege and say unto the Court as follows:

1. Plaintiff, DRV Fontaine, LLC ("DRV"), is a Maryland limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

2. Defendant Fontaine Business Park, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

3. Defendant Fontaine Business Park 2, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

4. Defendant Fontaine Business Park 3, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

5. Defendant Fontaine Business Park 4, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

6. Defendant Fontaine Business Park 5, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

7. Defendant Fontaine Business Park 6, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

8. Defendant Fontaine Business Park 7, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

9. Defendant Fontaine Business Park 8, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

10. Defendant Fontaine Business Park 9, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

11. Defendant Fontaine Business Park 10, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

12. Defendant Fontaine Business Park 11, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

13. Defendant Fontaine Business Park 12, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

14. Defendant Fontaine Business Park 13, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

15. Defendant Fontaine Business Park 14, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

16. Defendant Fontaine Business Park 15, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

17. Defendant Fontaine Business Park 16, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

18. Defendant Fontaine Business Park 17, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

19. Defendant Fontaine Business Park 18, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

20. Defendant Fontaine Business Park 19, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

21. Defendant Fontaine Business Park 20, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

22. Defendant Fontaine Business Park 21, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

23. Defendant Fontaine Business Park 22, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

24. Defendant Fontaine Business Park 23, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

25. Defendant Fontaine Business Park 24, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

26. Defendant Fontaine Business Park 25, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

27. Defendant Fontaine Business Park 26, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

28. Defendant Fontaine Business Park 27, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

29. Defendant Fontaine Business Park 28, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

30. Defendant Fontaine Business Park 29, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

31. Defendant Fontaine Business Park 30, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

32. Defendant Fontaine Business Park 31, LLC is a Delaware limited liability company registered in the State of South Carolina that owns property and conducts business in Richland County, South Carolina.

33. The real estate that is the subject of this foreclosure action is located in Richland County, and Richland County is the proper venue for this action.

34. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

FIRST CAUSE OF ACTION

35. The Plaintiff realleges each of the allegations set forth above as if repeated herein verbatim.

36. On or about December 14, 2007, Greenwich Capital made a loan to Fontaine Business Park, LLC; ("Original Borrower") in the original principal amount of Sixteen Million Three Hundred Thousand and 00/100 ($16,300,000.00) Dollars (the "Loan").

37. The Loan is evidenced by that Loan Agreement dated December 14, 2007, which was executed and delivered to Greenwich Capital, its successors and assigns, by Original Borrower (the "Loan Agreement").

38. A true and authentic copy of the Loan Agreement is incorporated herein by reference and attached hereto as Exhibit A.

39. Pursuant to the terms of paragraph 10.1 of the Loan Agreement (the "Non-recourse Provision"), Original Borrower and Greenwich Capital agreed that any borrower on the Loan would be obligated and liable to Greenwich Capital to the full extent (but only to the extent) of the Property, Rents and other collateral securing the Note with certain express exceptions as set forth in paragraph 10.1.2 of the Loan Agreement.

40. Pursuant to paragraph 10.1.2 of the Loan Agreement, regardless of the Non-recourse Provision, Original Borrower agreed that any borrower would be fully and personally liable to Greenwich Capital, its successors and assigns, and subject to legal action for the following:

> (a) fraud or intentional misrepresentation by any Borrower or Guarantor in connection with obtaining the Loan;
>
> (b) physical waste of the Property or any portion thereof, or after an Event of Default the removal or disposal of any portion of the Property;
>
> (c) any Proceeds paid by reason of any Insured Casualty or any Award received in connection with a Condemnation or other sums or payments attributable to the Property not applied in accordance with the provisions of the Loan Documents (except to the extent that a Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments);
>
> (d) all Rents of the Property received or collected by or on behalf of any Borrower after an Event of Default and not applied to payment of Principal and interest due under the Notes, and to the payment of actual and reasonable operating expenses of the Property, as they become due or payable (except to the extent that such application of such funds is prevented by Bankruptcy,

receivership, or similar judicial proceeding in which such Borrower is legally prevented from directing the disbursement of such sums);

(e) misappropriation (including failure to turn over to Lender on demand following an Event of Default) of tenant security deposits and rents collected in advance, or of funds held by any Borrower for the benefit of another party;

(f) the failure to pay Taxes, provided Borrower shall not be liable (A) to the extent funds to pay such amounts are available in the Tax and Insurance Account and Lender failed to pay same;

(g) the breach of any representation, warranty, covenant or indemnification in any Loan Document concerning Environmental Laws or Hazardous Substances, including Sections 4.21 and 5.8, and clauses (viii) through (xi) of Section 5.30;

(h) the breach of Section 5.13;

(i) any Borrower or any Guarantor of such Borrower or any of their direct or indirect Affiliates taking any action or making any omission intended or reasonably likely to hinder, delay, impair or prevent Lender in or from enforcing any and all of its rights and remedies under or pursuant to the Loan Documents or at law or in equity (unless the same is brought in good faith and is reasonable in light of then-existing legal precedent or is determined in favor of such Borrower or Guarantor pursuant to a final, non-appealable judgment of a court of competent jurisdiction);

(j) the termination of, failure to renew, the Management Agreement without Lender's consent, unless an acceptable replacement manager is appointed in accordance with Section 5.12.3 above (provided that only the Borrower(s) who voted in favor of such termination or failure to renew (or failed to consent to the appointment of such an acceptable replacement manager) will be liable under this provision);

(k) subject to the next succeeding sentence, the failure by any Borrower (each, for purposes of this subsection (k), a ***"Dissenting Borrower"***) to consent to a modification of the terms of the Loan in connection with a bona fide offer to purchase or refinance the Property or to prevent or cure an imminent or actual Event of Default after tenants in common constituting Borrower which together own 80 percent or more of the tenancy in common interests in the Property have approved such a modification. For purposes of this subsection (k), Lender shall have recourse solely against the Dissenting Borrower(s) to the extent of Lender's Losses with respect to the occurrence of any event giving rise to such matter which, for purposes of this subsection (k), (A) shall be deemed to be equal to any unpaid portion of the Debt that remains outstanding after Lender completes

its realization with respect to the Property (and all of its other collateral for the Loan pursuant to any of the Loan Documents) and applies the proceeds of such realization to the Debt (the "Deficiency") and (B) with respect to each Dissenting Borrower shall be limited to an amount equal to the product of (1) the Deficiency and (2) such Dissenting Borrower's undivided tenant in common interest in the Property (expressed as a percentage).

The items and acts identified in (a) through (k) above shall hereinafter be referred to as the "Borrowers' Recourse Liability."

41. The Loan is also evidenced by that Promissory Note dated December 14, 2007, in the principal amount of Sixteen Million, Three Hundred Thousand and 00/100 ($16,300,000.00) Dollars, which was executed and delivered to Greenwich Capital, its successors and assigns, by Original Borrower (the "Note").

42. A true and authentic copy of the Note is incorporated by reference herein and attached hereto as Exhibit B.

43. In order to better secure the payment of the Loan Agreement, Note and indebtedness secured thereby, Original Borrower executed and delivered to Greenwich Capital, its successors and assigns, a Mortgage, Assignment of Leases and Rents and Security Agreement dated December 14, 2007, which is recorded in the records of Richland County, South Carolina, in Book 1384 at Page 3723 (the "Mortgage").

44. A true and authentic copy of the Mortgage is incorporated herein by reference and attached hereto as Exhibit C.

45. The Mortgage expressly secures the Loan and Note.

46. The real property encumbered by the Mortgage includes all real property and improvements described therein, consisting of four office buildings known as Fontaine Business Park, and further described as follows:

Tract 1 (Fontaine I, 300 Arbor Lake Drive)
TMS No. 14207-02-01

All that certain piece, parcel or tract of land (the "Fee Simple Parcel") lying and situate in Richland County, South Carolina, on Arbor Lake Drive, being shown as Lot 5, Fontaine I, containing 13.60 acres, more or less, on the "Subdivision Plat of Fontaine Business Center" prepared by W. K. Dickson Engineers, Planners and Surveyors, dated September 12, 1993 and recorded on November 1, 1993 in Richland County ROD Plat Book 54 at Page 9112, to which plat reference is hereby made for a more particular description 1 by metes and bounds.

Together with all appurtenant easement rights as set forth in Declaration of Easements, Covenants, Conditions and Restrictions for Fontaine Business Center recorded in Richland County ROD Deed Book D-1096 at Page 30, as amended in Deed Book D-1171 at Page 350, and as further amended in Deed Book D-1187 at Page 550.

Together with an appurtenant and reserved non-exclusive easement for purposes of ingress and egress as set forth in Deed dated November 22, 1993 and recorded on November 24, 1993 in Richland County ROD Deed Book D-1171 at Page 386.

Tract 2 (Fontaine II, Arbor Lake Drive):
TMS No. 14207-02-02

All that certain piece, parcel or tract of land (the "Fee Simple Parcel") lying and being situate in Richland County, South Carolina, on Arbor Lake Drive, being shown as Lot 6, Fontaine II, containing 9.08 acres, more or less, on the "Subdivision Plat of Fontaine Business Center" prepared by W. K. Dickson Engineers, Planners and Surveyors, dated September 21, 1993 and recorded on November 1, 1993 in Richland County ROD Plat Book 54 at Page 9112, to which plat reference is hereby made for a more particular description of Fontaine II by metes and bounds.

Together with all appurtenant easement rights as set forth in Declaration of Easements, Covenants, Conditions and Restrictions for Fontaine Business Center recorded in Richland County ROD Deed Book D-1096 at Page 30, as amended in Deed Book D-1171 at Page 350, and as further amended in Deed Book D-1187 at Page 550.

Together with an appurtenant and reserved non-exclusive easement for purposes of ingress and egress as set forth in Deed dated November 22, 1993 and recorded on November 24, 1993 in Richland County ROD Deed Book D-1171 at Page 393.

Tract 3 (Fontaine III, 200 Arbor Lake Drive):
TMS No. 14203-13-02

All that certain piece, parcel or tract of land (the "Fee Simple Parcel") lying and being situate in Richland County, South Carolina, on Arbor Lake Drive, being shown as Lot 3-A, containing 0.82 of an acre, more or less, and Lot 3-B, containing 3.96 acres, more or less. Fontaine III, containing in the aggregate 4.78 acres, more or less, on the "Subdivision Plat of Fontaine Business Center" prepared by W. K. Dickson Engineers, Planners and Surveyors, dated September 21, 1993 and recorded on November 1, 1993 in Richland County ROD Plat Book 54 at Page 9112, to which Plat reference is hereby made for a more particular description of Fontaine III by metes and bounds.

Together with, also, non-exclusive perpetual easements for access, over and across the areas identified as Parcel "B-1" and Parcel "C" on the above-described plat and the right of pedestrian and vehicular access for ingress, egress and regress over and across all existing internal drives within the parking lot(s) now or hereafter located on the State of South Carolina Retirement Systems Property, as shown on a plat recorded in Plat Book 54 at Page 1448, and as described in the Deed from Nations Bank of North Carolina, N.A., as Trustee for the NCNB Real Estate Funds, to the State of South Carolina Retirement Systems, a Division of the State of South Carolina Budget and Control Board, dated July 16, 1992 and recorded on July 16, 1992 in Richland County ROD Deed Book D-1100 at Page 350.

Together with all appurtenant easement rights as set forth in Declaration of Easement, Covenants, Conditions and Restrictions for Fontaine Business Center recorded in Richland County ROD Deed Book D-1096 at Page 30 and amended in Deed Book D-1171 at Page 350.

Tract 4 (Fontaine V, N/S Arbor Lake Drive):
TMS No. 14203-13-01

All that certain piece, parcel or tract of land (the "Fee Simple Parcel") lying and being situate in Richland County, South Carolina, on Arbor Lake Drive being shown as Lot 4, Fontaine V, containing 2.32 acres, more or less, on the "Subdivision Plat of Fontaine Business Center" prepared by W. K. Dickson Engineers, Planners and Surveyors, dated September 21, 1993 and recorded on November 1, 1993 in Richland County ROD Plat Book 54 at Page 9112, to which plat reference is hereby made for a more particular description of Fontaine II by metes and bounds.

Together with all appurtenant easement rights as set forth in Declaration of Easement, Covenants, Conditions and Restrictions for Fontaine Business Center

recorded in Richland County ROD Deed Book D-1096 at Page 30 and amended in Deed Book D-1171 at Page 350.

Together with an appurtenant and reserved non-exclusive easement for purposes of ingress and egress as set forth in Deed dated November 22, 1993 and recorded on November 24, 1993 in Richland County ROD Deed Book D-1171 at Page 405.

This being the same property conveyed to Fontaine Business Park, LLC, et al. by Deed of AP Southeast Portfolio Partners, L.P., dated December 12, 2007 and recorded December 18, 2007, in Record Book 1384 at Page 3712.

(the "Premises")

All the buildings, structures, fixtures and other improvements now or hereafter located thereon

(the "Improvements");

Together with

(a) all the estate, right, title, claim or demand whatsoever of Mortgagor either in law or in equity, in possession or expectancy, of, in and to the Property or any part thereof;

(b) 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, 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(c) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the

Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the *"Equipment"*), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Property is located (the *"UCC"*), superior in lien to the lien of this Mortgage;

(d) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(e) all leases, subleases 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 or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the *"Leases"*) and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including 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 Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the sue and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as 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;

(f) all proceeds of any and unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(h) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including 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 (hereinafter collectively referred to as the ***"Intangibles"***);

(i) all right, title and interest of each entity constituting Mortgagor, as tenants in common, under and pursuant to the Property Agreements, as defined in the Loan Agreement dated concurrently herewith between Lender and Borrower (the ***"Property Agreements"***), including, without limitation, that certain Co-Ownership Agreement with respect to the Property (the ***"Tenant in Common Agreement"***), including any rights of first refusal (including such rights arising under Section 363(i) of Chapter 11 of the United States Bankruptcy Code), purchase options or other similar rights afforded to any tenant in common under the Tenant in Common Agreement; and

(j) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

(The Premises, the Improvements and the rights, interests, and estates described in (a) through (j) above shall be hereinafter collectively referred to as the "Property")

47. The Mortgage creates a first priority lien on the Property.

48. Original Borrower also granted to Greenwich Capital, its successors and assigns, within the Mortgage a security interest over all personal property, whether tangible or intangible

in nature, included in the definition of "Property" to the full extent such portions of the Property may be subject to the Uniform Commercial Code.

49. The security interest granted to Greenwich Capital, its successors and assigns, by Original Borrower is included in the defined term "Mortgage" above, but the specific grant of the security interest in paragraph 12 of the Mortgage may also be hereinafter, separately referred to as the "Security Agreement."

50. The personal property over which Original Borrower granted a security interest as set forth above is included in the definition and description of the "Property," but may also be hereinafter, separately referred to as the "Collateral."

51. In order to perfect the security interest granted in the Collateral, a UCC financing statement was filed centrally with the Delaware Department of State on December 17, 2007 and locally with the Richland County Register of Deeds on December 18, 2007.

52. On or about December 14, 2007, Original Borrower executed and delivered to Greenwich Capital, its successors and assigns, an Assignment of Leases and Rents, which is recorded in the records of Richland County, South Carolina, in Book 1384 at Page 3744 (the "Assignment of Leases").

53. A true and authentic copy of the Assignment of Leases is incorporated herein by reference and attached hereto as Exhibit D.

54. On or about December 14, 2007, Original Borrower executed and delivered to Greenwich Capital, its successors and assigns, an Assignment of Agreements, Licenses, Permits and Contracts (the "Assignment of Agreements").

55. A true and authentic copy of the Assignment of Agreements is incorporated herein by reference and attached hereto as Exhibit E.

56. Pursuant to the Assignment of Agreements, Original Borrower granted Greenwich Capital, its successors and assigns, its interest in all agreements, licenses and contracts relating to the Property, including all management agreements.

57. On or about December 14, 2007, Original Borrower, along with Fontaine Business Park 2, LLC, Fontaine Business Park 3, LLC, Fontaine Business Park 4, LLC, Fontaine Business Park 5, LLC, Fontaine Business Park 6, LLC, Fontaine Business Park 7, LLC, Fontaine Business Park 8, LLC, Fontaine Business Park 9, LLC, Fontaine Business Park 10, LLC, Fontaine Business Park 11, LLC, Fontaine Business Park 12, LLC, Fontaine Business Park 13, LLC, Fontaine Business Park 14, LLC, Fontaine Business Park 15, LLC, Fontaine Business Park 16, LLC, Fontaine Business Park 17, LLC, Fontaine Business Park 18, LLC, Fontaine Business Park 19, LLC, Fontaine Business Park 20, LLC, Fontaine Business Park 21, LLC, Fontaine Business Park 22, LLC, Fontaine Business Park 23, LLC, Fontaine Business Park 24, LLC, Fontaine Business Park 26, LLC, and Fontaine Business Park 28, LLC (collectively, excluding the Original Borrower, the "TICs 1"), executed and delivered to Greenwich Capital, its successors and assigns, a Loan Assumption Agreement, whereby the TICs 1 collectively assumed all obligations under the Loan Documents, including Borrowers' Recourse Liability, jointly and severally, along with Original Borrower, which reaffirmed its obligations.

58. The Loan Assumption Agreement was recorded in the records of Richland County, South Carolina, in Book 1384 at Page 3763.

59. A true and authentic copy of the Loan Assumption Agreement is incorporated herein by reference and attached hereto as Exhibit F.

60. In order to further perfect the security interest granted in the Collateral, Greenwich Capital filed a UCC financing statement for each of the TICs 1 centrally with the

Delaware Department of State on December 17, 2007 and locally with the Richland County Register of Deeds on December 18, 2007.

61. On or about December 14, 2007, U.S. Commercial, LLC, a Virginia limited liability company ("US Commercial"), and Kevin Fitzgerald, individually ("Fitzgerald"), executed and delivered to Greenwich Capital a Guaranty of Recourse Obligations, wherein US Commercial and Fitzgerald unconditionally guaranteed to Greenwich Capital, its successors and assigns, the full and prompt payment when due of the Borrowers' Recourse Liability (the "US Commercial and Fitzgerald Guaranty").

62. A true and authentic copy of the US Commercial and Fitzgerald Guaranty is incorporated herein by reference and is attached hereto as Exhibit G.

63. On or about December 14, 2007, the principal investor for each of the TICs 1 executed and delivered to Greenwich Capital a separate Guaranty of Recourse Obligations, wherein the guarantor of each such guaranty, unconditionally guaranteed to Greenwich Capital, its successors and assigns, the full and prompt payment when due of the Borrowers' Recourse Liability (hereinafter, collectively the "TICs 1 Guaranties").

64. A true and authentic copy of the TICs 1 Guaranties are incorporated herein by reference and attached hereto as Exhibit H.

65. On or about January 28, 2008, Original Borrower, along with Fontaine Business Park 25, LLC, Fontaine Business Park 27, LLC, Fontaine Business Park 29, LLC, Fontaine Business Park 30, LLC, and Fontaine Business Park 31, LLC (collectively, excluding Original Borrower, "TICs 2"), executed and delivered to Greenwich Capital, its successors and assigns, an Amendment to Loan Assumption Agreement, whereby TICs 2 collectively assumed all

obligations under the Loan Documents, including Borrowers' Recourse Liability, jointly and severally, along with the obligors identified in the Loan Assumption Agreement.

66. The Amendment to Loan Assumption Agreement was recorded in the records of Richland County, South Carolina, in Book 1399 at Page 3207.

67. A true and authentic copy of the Amendment to Loan Assumption Agreement is incorporated herein by reference and attached hereto as Exhibit I.

68. In order to further perfect the security interest granted in the Collateral, Greenwich Capital filed a UCC financing statement for each of the TICs 2 centrally with the Delaware Department of State on February 21, 2008 and locally with the Richland County Register of Deeds on February 8, 2008.

69. On or about January 28, 2008, the principal investor for each of the TICs 2 executed and delivered to Greenwich Capital a separate Guaranty of Recourse Obligations, wherein the guarantor of each such guaranty, unconditionally guaranteed to Greenwich Capital, its successors and assigns, the full and prompt payment when due of the Borrowers' Recourse Liability (hereinafter, collectively the "TICs 2 Guaranties").

70. A true and authentic copy of the TICs 2 Guaranties are incorporated herein by reference and attached hereto as Exhibit J.

71. US Commercial, Fitzgerald, the signators on each of the TICs 1 Guaranties, and the signators on each of the TICs 2 Guaranties shall hereinafter be collectively referred to as the "Guarantors."

72. On about May 16, 2008, Greenwich Capital assigned to The Royal Bank of Scotland plc ("RBS Bank") all of its interest under the Loan Agreement, the Note, the Mortgage, the Assignment of Leases, the Assignment of Agreements, the Loan Assumption Agreement, the

US Commercial and Fitzgerald Guaranty, the TICs 1 Guaranties, the Amendment to Loan Assumption Agreement, the TICs 2 Guaranties, and all other Loan Documents (the "RBS Bank Assignment").

73. The RBS Bank Assignment is evidenced by an Allonge dated May 16, 2008 (the "RBS Bank Allonge").

74. A true and authentic copy of the RBS Bank Allonge is incorporated herein by reference and is attached to the Note, which is Exhibit B hereto.

75. The RBS Bank Assignment is further evidenced by that Assignment and Assumption of Loan and Related Documents dated as of May 16, 2008 (the "RBS Bank Assignment and Assumption Agreement").

76. A true and authentic copy of the RBS Assignment and Assumption Agreement is incorporated herein by reference and is attached hereto as Exhibit K.

77. The RBS Bank Assignment is further evidenced by that Assignment of Assignment of Leases and Rents dated as of May 16, 2008 (the "RBS Bank Assignment of Assignment of Leases").

78. The RBS Bank Assignment of Assignment of Leases was recorded in the records of Richland County, South Carolina, in Book 1456 at Page 3609.

79. A true and authentic copy of the RBS Bank Assignment of Assignment of Leases is incorporated herein by reference and is attached hereto as Exhibit L.

80. The RBS Bank Assignment is further evidenced by that Assignment of Mortgage, Assignment of Rents and Security Agreement dated as of May 16, 2008 (the "RBS Bank Assignment of Mortgage").

81. The RBS Bank Assignment of Mortgage was recorded in the records of Richland County, South Carolina, in Book 1456 at Page 3601.

82. A true and authentic copy of the RBS Assignment of Mortgage is incorporated herein by reference and is attached hereto as Exhibit M.

83. The RBS Bank Assignment is further evidenced by numerous assignments of the UCC filings made centrally in Delaware and locally in Richland County.

84. On or about April 2, 2009, RBS Bank assigned all of its interest under the Loan Agreement, the Note, the Mortgage, the Assignment of Leases, the Assignment of Agreements, the Loan Assumption Agreement, the US Commercial and Fitzgerald Guaranty, the TICs 1 Guaranties, the Amendment to Loan Assumption Agreement, the TICs 2 Guaranties, and all other Loan Documents to DRV (the "DRV Assignment").

85. The DRV Assignment is evidenced by an Allonge dated April 2, 2009 (the "DRV Allonge"). The DRV Allonge is incorporated herein by reference and a true and authentic copy thereof is attached to the Note, which is Exhibit B to the Complaint.

86. The DRV Assignment is further evidenced by that Assignment and Assumption dated as of April 2, 2009 (the "DRV Assignment and Assumption Agreement").

87. A true and authentic copy of the DRV Assignment and Assumption Agreement is incorporated herein by reference and is attached hereto as Exhibit N.

88. The DRV Assignment is further evidenced by that Assignment of Assignment of Leases and Rents dated as of April 2, 2009 (the "DRV Assignment of Assignment of Leases").

89. The DRV Assignment of Assignment of Leases was recorded in the records of Richland County, South Carolina, in Book 1509 at Page 641.

90. A true and authentic copy of the DRV Assignment of Assignment of Leases is incorporated herein by reference and is attached hereto as Exhibit O.

91. The DRV Assignment is further evidenced by that Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated as of April 2, 2009 (the "DRV Assignment of Mortgage").

92. The DRV Assignment of Mortgage was recorded in the records of Richland County, South Carolina, in Book 1509 at Page 635.

93. A true and authentic copy of the DRV Assignment of Mortgage is incorporated herein by reference and is attached hereto as Exhibit P.

94. The DRV Assignment is further evidenced by numerous assignments of the UCC filings made centrally in Delaware and locally in Richland County.

Reserve Accounts Default

95. The funds deposited into the "Capital Reserve Account" and the "Rollover Reserve Account" (as those terms are defined in the Loan Agreement) are necessary to properly maintain the Property (which is DRV's collateral) and to attract and retain tenants at the Property.

96. DRV requested a projected budget (the "Capital Budget") on multiple occasions between September 2010 and May 2011.

97. At least as early as December 14, 2010, and on multiple occasions thereafter, Defendants' onsite property manager for the Property, Gullane I, LLC d/b/a CBRE Columbia ("CB Richard Ellis") advised DRV that it had submitted a Capital Budget to Defendants for review and was awaiting their approval before releasing it to DRV.

98. In May 2011, CB Richard Ellis released the Capital Budget to DRV. The Capital Budget reflected the capital needs for three years for repairs, replacements and construction of

tenant improvements for existing and projected vacant spaces within the Property. Costs included in the Capital Budget were substantially greater than existing and projected balances in the Capital Reserve Account and the Rollover Reserve Account.

99. On July 11, 2011, DRV provided notice to Defendants' representative of an increase in the amount of monthly payments required for the Capital Reserve Account and the Rollover Reserve Account (the "Reserve Accounts") in order to cure the shortfalls projected in the Capital Budget furnished by Defendants' onsite property manager.

100. This notice was given pursuant to the express terms of Sections 3.4 and 3.5 of the Loan Agreement.

101. During a teleconference with DRV representatives on August 1, 2011, Defendants' representatives agreed to develop a plan to address the cash needs of the Defendants to properly fund the Reserve Accounts.

102. Defendants paid the increased monthly payments into the Reserve Accounts for the next four months.

103. In January 2012, Defendants unilaterally returned to making the old monthly payments into the Reserve Accounts.

104. DRV objected to this as a breach and reminded Defendants of their agreement to develop a plan to fund the increased Reserve Accounts payments.

105. Defendants also have an obligation under the Loan Documents to make payments into reserve accounts for the payment of property taxes and insurance relating to the Property (the "Tax and Insurance Account").

106. On April 1, 2012, DRV advised CB Richard Ellis of an increase in the required monthly contributions into the Tax and Insurance Account.

107. Defendants paid the increased contributions into the Tax and Insurance Account in April, May and June of 2012.

108. In July 2012, Defendants unilaterally reduced the payments into the Tax and Insurance Account to a level they felt was sufficient.

109. DRV does not believe that the amounts being paid into the tax and insurance reserve accounts by Defendants are sufficient. Defendants' reduction in the payments to those reserve accounts without DRV's consent is not permitted under the Loan Agreement.

110. Despite the Defendants' failure to follow through on their agreements, DRV continued to give the Defendants the benefit of the doubt that they were working diligently and in good faith to find a solution to the shortfall in their cash needed to make the increased monthly Reserve Accounts payments.

111. In July 2012, when Defendants had not presented a solution and then reduced the payments into the Tax and Insurance Account, it became apparent to DRV that no plan was forthcoming to address the shortfall.

112. DRV provided notice to Defendants on July 27, 2012, that failure to make the full payments to the Reserve Accounts within ten days would constitute an Event of Default (as defined in the Loan Agreement).

113. Defendants did not make the demanded payment within ten days of the July 27, 2012 demand letter and have not made the demanded payment as of the date of this Complaint.

114. As a result of Defendants' failure to make the payments due on the Reserve Accounts, an Event of Default has occurred (the "Reserve Accounts Default").

Payment Default

115. Defendants failed or refused to pay the monthly debt service payment that was due for the month of October 2012.

116. Defendants' failure to pay that debt servicing payment constitutes an Event of Default under Section 8.1 of the Loan Agreement (the "Payment Default").

117. In October 2012, DRV provided notice, through counsel, that Defendants' failure to make the debt service payment due in October was an additional Event of Default under the Loan Documents.

118. As a result of the Payment Default, DRV has accelerated the entire Debt pursuant to Section 8.2.1 of the Loan Agreement.

119. As a result of this Payment Default, DRV has also exercised its right to apply the Default Rate of interest to the entire unpaid Debt pursuant to Section 2.2.2 of the Loan Agreement.

120. As a result of the Reserve Accounts Default and the Payment Default, DRV demanded, pursuant to Section 5.12.2 of the Loan Agreement, that the current management agreement for the Property be terminated and the property manager under that agreement, Fontaine Management, LLC, be replaced with a replacement manager acceptable to DRV.

121. Fontaine Management, LLC is an affiliate of Original Borrower, US Commercial and Fitzgerald that sub-contracts materially all operational functions to CB Richard Ellis.

122. As of the date of this affidavit Defendants have failed or refused to comply with the demand to terminate the current management agreement with Fontaine Management, LLC.

123. As a result of the Reserve Accounts Default and the Payment Default, DRV has also terminated Defendants' license to continue to collect rents and profits generated by the

Property and directed that those funds be held by the onsite manager CB Richard Ellis pursuant to the Mortgage and the Assignment of Leases.

124. As of the date of this Complaint, Defendants have failed or refused to comply with the termination of it right to collect rents and profits, have failed to direct CB Richard Ellis to hold the rents and profits, and continue to exercise control over the rents and profits from the Property.

125. As of November 19, 2012, the outstanding balance due and owing on the Loan Documents was as follows:

Principal:	$16,300,000.00
Yield Maintenance Premium	$ 4,646,277.02
Accrued Interest (through Oct. 10, 2012)	$ 1,544,014.14
Late Charges	$ 109,808.11
Lender Expenses	$ 29,230.50
Total as of October 10, 2012:	$22,479,354.51
Per diem interest since October 10, 2012	$ 7,268.32
Total as of November 19, 2012	**$22,770,087.49**

Interest continues to accrue at the Default Rate.

126. The Plaintiff is entitled to and hereby seeks foreclosure of the Mortgage.

127. This action is taken subject to any and all senior easements of record.

128. This action is taken subject to all senior encumbrances, which would be revealed by a title examination of the property.

129. This action is taken subject to all applicable taxes due and payable, accrued and accruing on the Property encumbered by the Mortgage.

130. Plaintiff demands and reserves its right to recover against the Defendants a deficiency judgment for any deficiency balance that remains due on the Loan after application of

the proceeds of the foreclosure sale, if any of the Defendants remain liable under any provision constituting Borrowers' Recourse Liability as set forth in section 10.1.2 of the Loan Agreement.

131. By virtue of the US Commercial and Fitzgerald Guaranty, the TICs 1 Guaranties, and the TICs 2 Guaranties, the Guarantors agreed to be liable to Plaintiff for all Borrowers' Recourse Liability as more fully set forth in the Loan Agreement and each guaranty.

132. Plaintiff requests a determination by this court as to whether any act or omission has occurred that would give rise to Borrowers' Recourse Liability, and further seeks judgment against each Defendant for all amounts due and owing to Plaintiff as the result of any acts that give rise to Borrowers' Recourse Liability, as defined above.

133. Plaintiff reserves its right to pursue the Guarantors for any of Borrowers' Recourse Liability for which each such Guarantor may be liable as set forth in the Loan Agreement and the guaranties.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court issue its order awarding the following relief:

A. Ascertaining and determining the amount due upon the Note and Mortgage held by the Plaintiff, including attorneys' fees and costs of this action.

B. Declaring the Plaintiff's Mortgage to be a first lien on the encumbered Property and awarding Plaintiff judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due with reasonable attorneys' fees and for the costs of this action.

C. Ordering that the mortgaged Property (including the Collateral) be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

    1. First to the costs and expenses of the within action and sale;

    2. To the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorneys' fees aforesaid; and

    3. The surplus, if any, to be distributed according to law.

4. Awarding Plaintiff a deficiency judgment against Defendants for any amounts found due and owing under the Borrowers' Recourse Liability should the proceeds of the foreclosure sale be insufficient to cover the total debt.

D. For an Order directing and empowering the Sheriff of Richland County, South Carolina, to place the successful purchaser(s) at the foreclosure sale in possession of the Property hereinabove described should the same become necessary.

E. For an Order directing and empowering the Sheriff of Richland County, South Carolina, to remove any of the Defendants' personal property, which is not subject to the Security Agreement and is not Collateral for the Loan, from the Property after the foreclosure sale should the same become necessary.

F. For reimbursement of all costs incurred for inspecting and securing the property(s) as a result of the delinquency.

G. For such other and further relief as may be just and proper.

Dated: November 20, 2012

MCNAIR LAW FIRM, P.A.

By _____

Paul D. Harrill
E-Mail: pharrill@mcnair.net
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800
Attorneys for Plaintiff

LOAN AGREEMENT
(Senior Loan)

Dated as of December 14, 2007

by and among

FONTAINE BUSINESS PARK, LLC
a Delaware limited liability company,

as Borrower,

and

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.,
a Delaware corporation,

as Lender.

FONTAINE BUSINESS PARK

Richland County, South Carolina

TABLE OF CONTENTS

Schedule 1 - Required Repairs
Schedule 2 - Exceptions to Representations and Warranties
Schedule 3 - Organization of Borrower
Schedule 4 - Definition of Special Purpose Bankruptcy Remote Entity
Schedule 5 - Form of Guaranty of Recourse Obligations
Schedule 6 - Form of Assignment and Assumption Agreement
Schedule 7 - Rent Roll

TABLE OF CONTENTS

Page

1. DEFINITIONS; PRINCIPLES OF CONSTRUCTION 1
   1.1 Specific Definitions 1
   1.2 Index of Other Definitions 14
   1.3 Principles of Construction 17

2. GENERAL LOAN TERMS 17
   2.1 The Loan 17
   2.2 Interest; Monthly Payments 17
   2.3 Loan Repayment 18
   2.4 Release of Property 21
   2.5 Payments and Computations 22

3. RESERVES 22
   3.1 [Intentionally deleted] 22
   3.2 Required Repairs 22
   3.3 Taxes and Insurance 23
   3.4 Capital Expense Reserves 24
   3.5 Rollover Reserves 24
   3.6 Leasing Reserve 25
   3.7 Security Deposits 26
   3.9 [Intentionally deleted] 26
   3.10 [Intentionally deleted] 26
   3.11 Grant of Security Interest; Application of Funds 26

4. REPRESENTATIONS AND WARRANTIES 27
   4.1 Organization; Special Purpose 27
   4.2 Proceedings; Enforceability 27
   4.3 No Conflicts 27
   4.4 Litigation 28
   4.5 Agreements 28
   4.6 Title 28
   4.7 No Bankruptcy Filing 28
   4.8 Full and Accurate Disclosure 28
   4.9 Tax Filings 28
   4.10 No Plan Assets 29
   4.11 Compliance 29
   4.12 Contracts 29
   4.13 Federal Reserve Regulations; Investment Company Act 29
   4.14 Easements; Utilities and Public Access 30
   4.15 Physical Condition 30
   4.16 Leases 30
   4.17 Fraudulent Transfer 31
   4.20 Management Agreement 32

Page

4.21 Hazardous Substances....32
4.22 Name....32
4.23 Other Debt....32
4.24 Tenant in Common Agreement....33
4.25 Securities Laws Compliance....34

5. COVENANTS....34
5.1 Existence....34
5.2 Taxes and Other Charges....35
5.3 Access to Property....35
5.4 Repairs; Maintenance and Compliance; Alterations....35
5.5 Performance of Other Agreements....36
5.6 Cooperate in Legal Proceedings....36
5.7 Further Assurances....36
5.8 Environmental Matters....37
5.9 Title to the Property....39
5.10 Leases....39
5.11 [Intentionally deleted]....41
5.13 Special Purpose Bankruptcy Remote Entity....42
5.14 [Intentionally deleted]....42
5.15 Change In Business or Operation of Property....42
5.16 Debt Cancellation....42
5.17 Affiliate Transactions....43
5.18 Zoning....43
5.19 No Joint Assessment....43
5.20 Principal Place of Business....43
5.21 Change of Name, Identity or Structure....43
5.22 Indebtedness....43
5.23 Licenses....43
5.24 Compliance with Restrictive Covenants, Etc....43
5.25 ERISA....44
5.26 Transfers....44
5.27 Liens....49
5.28 Dissolution....49
5.29 Expenses....49
5.30 Indemnity....50
5.31 Tenant in Common Agreement and Other Property Agreements....51

6. NOTICES AND REPORTING....54
6.1 Notices....54
6.2 Borrower Notices and Deliveries....55
6.3 Financial Reporting....55

7. INSURANCE; CASUALTY; AND CONDEMNATION....57
7.1 Insurance....57
7.2 Casualty....60

Page

7.3 Condemnation 61
7.4 Application of Proceeds or Award 61

8. DEFAULTS 63
8.1 Events of Default 63
8.2 Remedies 64

9. SPECIAL PROVISIONS 66
9.1 Sale of Note and Secondary Market Transaction 66

10. MISCELLANEOUS 70
10.1 Exculpation 70
10.2 Brokers and Financial Advisors 72
10.3 Retention of Servicer 73
10.4 Survival 73
10.5 Lender's Discretion 73
10.6 Governing Law 73
10.7 Modification, Waiver in Writing 74
10.8 Trial by Jury 74
10.9 Headings/Exhibits 75
10.10 Severability 75
10.11 Preferences 75
10.12 Waiver of Notice 75
10.13 Intentionally Omitted 75
10.14 Prior Agreements 75
10.15 Offsets, Counterclaims and Defenses 76
10.16 Publicity 76
10.17 No Usury 76
10.18 Conflict; Construction of Documents 76
10.19 No Third Party Beneficiaries 77
10.20 Yield Maintenance Premium 77
10.21 Assignment 77
10.22 Original Borrower as Borrowers' Designee 77
10.23 [Intentionally deleted.] 77
10.24 Joint and Several 78
10.25 Set-Off 78
10.26 1031 Exchange 78
10.27 Certain Additional Rights of Lender 78
10.28 Counterparts 79
10.29 Reasonable Attorney's Fees 79

LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of December 14, 2007 (as the same may be modified, supplemented, amended or otherwise changed, this "*Agreement*"), is made by and among **FONTAINE BUSINESS PARK, LLC**, a Delaware limited liability company, together with its permitted successors and assigns ("*Borrower*"), and **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation (together with its successors and assigns, "*Lender*").

1. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 Specific Definitions. The following terms have the meanings set forth below:

Account: an account into which Lender shall deposit sums which Borrower is required to deposit with Lender under Section 3 hereof, which shall at all times be an Eligible Account and may be ledger or book entry accounts and not actual accounts.

Affiliate: as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

Approved Capital Expenses: Capital Expenses incurred by Borrowers and approved by Lender.

Approved Control Party: U.S. Advisors; provided, however, at the time in question (i) such Approved Control Party shall (1) be solvent, (2) have never been convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no material outstanding judgments against it, and (ii) Lender shall have received a credit check and background investigation against such Approved Control Party reasonably acceptable to Lender.

Approved Leasing Expenses: actual out-of-pocket expenses incurred by Borrower and payable to third parties that are not Affiliates of Borrower or Guarantor in leasing space at the Property pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (i) are (A) specifically approved by Lender in connection with approving the applicable Lease, (B) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not require Lender's approval under the Loan Documents, or (C) otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed, and (ii) are substantiated by executed Lease documents and brokerage agreements.

Approved Mezzanine Lender: the lender under an Approved Mezzanine Loan that has been approved by Lender and the applicable Rating Agencies.

Approved Mezzanine Loan: a loan from an Approved Mezzanine Lender to Mezzanine Borrower provided that: (A) Borrower shall provide not less than thirty (30) days'

advance written notice to Lender regarding any proposed mezzanine debt and furnish to Lender such information as Lender may require regarding the mezzanine debt, and Lender shall have approved the mezzanine debt; (B) thirty-six (36) complete calendar months shall have elapsed after the date hereof without the occurrence of (i) any Event of Default, cured or uncured, arising from Borrower's breach of any monetary obligation under the Loan Documents, or (ii) any Event of Default arising from Borrower's breach of any non-monetary obligation under the Loan Documents which has not been cured at or before the time the Approved Mezzanine Loan is incurred; (C) a current MAI appraisal of the Property prepared by an MAI appraiser selected by Lender and in form and substance reasonably acceptable to Lender shall have confirmed that the Property has sufficient value such that the aggregate of the principal of the Loan and the Approved Mezzanine Loan shall not exceed 70% of the "as-is" appraised value of the Property at the time the Approved Mezzanine Loan is incurred; (D) the annual underwritten net cash flow from the Property available for combined debt service under the Loan Documents and the Approved Mezzanine Loan shall produce a combined Debt Service Coverage Ratio of at least 1.20 to 1.00 as determined by Lender in accordance with its customary underwriting standards reasonably applied; (E) such loan shall be secured by the Mezzanine Loan Liens; (F) the loan documents evidencing and securing such loan shall have been approved by Lender; (G) the term of such Approved Mezzanine Loan shall expire on or before the Stated Maturity Date; (H) Lender shall have received an intercreditor and subordination agreement from the holder of the Approved Mezzanine Loan substantially in the form of Appendix VI to the U.S. CMBS Legal and Structured Finance Criteria published by Standard & Poors (May 1, 2003) with such commercially reasonable negotiated changes acceptable to Lender and any applicable Rating Agency, and otherwise in form and substance reasonably satisfactory to Lender; (I) Borrower shall have paid all reasonable costs and expenses incurred by Lender in connection with the Approved Mezzanine Loan, including reasonable attorneys' fees and costs; (J) the lender of the Approved Mezzanine Loan shall be a Qualified Lender; (K) Lender shall have received such opinions of counsel as are customary and standard in such transactions, including, if the Approved Mezzanine Loan is made after a Secondary Market Transaction, an opinion that the mezzanine debt will not be a "significant modification" of the Loan within the meaning of Section 1001 of the Internal Revenue Code and Section 1.860G-2(b)(3) of the Regulations of the United States Department of Treasury, and that the mezzanine debt will not result in a tax being imposed on the trust which becomes the holder of the Note and the Deed of Trust following a Secondary Market Transaction (as defined in Section 33 below) or cause any REMIC involved in such Secondary Market Transaction to fail to qualify as a REMIC under the applicable provisions of the Internal Revenue Code and the Regulations of the United States Department of Treasury promulgated in connection therewith; (L) if the Approved Mezzanine Loan is made after a Secondary Market Transaction, Lender shall have received a Rating Comfort Letter from each applicable Rating Agency; and (M) if required by Lender, Borrower shall have implemented cash management controls in form and substance acceptable to Lender and at Borrower's sole cost and expense which shall remain in place for a term not equal to less than the term of the Approved Mezzanine Loan.

Approved TIC Borrower Control Party: a transferee of a direct or indirect interest in any TIC Borrower (which owns less than a 5% tenant in common interest in the Property) that has acquired such interest by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest; provided, however, at the time in question (i) such Approved TIC Borrower Control Party shall (1) be solvent, (2) have never been

convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no outstanding judgments against him/her which could have a material adverse effect on the applicable TIC Borrower to pay or perform any obligation under any Loan Document or to provide any security as required by the Loan Documents, and (ii) Lender shall have received a credit check investigation against such Approved TIC Borrower Control Party reasonably acceptable to Lender.

Borrowers: collectively, Original Borrower and each TIC Borrower that may hereafter assume the Loan as contemplated by Section 5.26.2, together with their respective permitted successors and assigns.

Borrower: any one of the Borrowers individually, and all of the Borrowers collectively.

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Capital Expenses: expenses that are capital in nature or required under GAAP to be capitalized.

Certificates: any securities (including all classes thereof) representing beneficial ownership interests in the Loan or in a pool of mortgage loans including the Loan issued in connection with a Secondary Market Transaction.

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

Control: with respect to any Person, either (i) ownership directly or indirectly of 51% or more of all equity interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

Debt: the unpaid Principal, all interest accrued and unpaid thereon, any Yield Maintenance Premium and all other sums due to Lender in respect of the Loan or under any Loan Document.

Debt Service: with respect to any particular period, the greater of (i) scheduled Principal and interest payments due under the Note in such period or (ii) the product of (A) the outstanding Principal as of the end of such period multiplied by (B) 10.09%, but assuming only for the purpose of calculating the Debt Service Coverage Ratio that the Monthly Debt Service Payment Amount is payable.

Debt Service Coverage Ratio: as of any date, the ratio calculated by Lender of (i) the Net Operating Income for the 12-month period ending with the most recently completed calendar month to (ii) the Debt Service with respect to such period.

Default: the occurrence of any event under any Loan Document which, with the giving of notice or passage of time, or both, would be an Event of Default.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) 5% above the Interest Rate, compounded monthly.

Defeasance Collateral: U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, all Payment Dates and other scheduled payment dates, if any, under the Note after the Defeasance Date and up to and including the Stated Maturity Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments.

Eligible Account: a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts (A) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (B) as to which Lender has received a Rating Comfort Letter from each of the applicable Rating Agencies with respect to holding funds in such account, or (ii) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations §9.10(b), having in either case corporate trust powers, acting in its fiduciary capacity, and a combined capital and surplus of at least $50,000,000 and subject to supervision or examination by federal and state authorities. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

Eligible Institution: a depository institution insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody's and F-1+ by Fitch, in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's.

Eligibility Requirements: with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of $600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

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

ERISA Affiliate: all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common Control and all other entities which, together with Borrowers (or any Borrower), are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

Fund Manager: U.S. Commercial LLC, a Virginia limited liability company.

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

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

Guarantors: Fund Manager, Kevin Fitzgerald and each TIC Owner that may hereafter execute and deliver a guaranty of recourse obligations as contemplated by Section 5.26.2.

Interest Period: (i) the period from the date hereof through the first day thereafter that is the 5th day of a calendar month and (ii) each period thereafter from the 6th day of each calendar month through the 5th day of the next calendar month; except that the Interest Period, if any, that would otherwise commence before and end after the Maturity Date shall end on the Maturity Date. Notwithstanding the foregoing, if Lender exercises its right to change the Payment Date to a New Payment Date in accordance with Section 2.2.4, then from and after such election, each Interest Period shall be the period from the New Payment Date in each calendar month through the day in the next succeeding calendar month immediately preceding the New Payment Date in such calendar month.

Interest Rate: a rate of interest equal to [___] (or, when applicable pursuant to this Agreement or any Loan Document, the Default Rate).

Key Principals: U.S. Advisors, Kevin Fitzgerald and H. Michael Schwartz.

Leases: 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 Property or the Improvements, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder.

Lease Termination Payments: (i) all fees, penalties, commissions or other payments made to Borrowers in connection with or relating to the rejection, buy-out, termination, surrender or cancellation of any Lease (including in connection with any bankruptcy proceeding), and any security deposits or proceeds of letters of credit held by Borrowers in lieu of cash security deposits, which Borrowers are permitted to retain pursuant to the applicable provisions of any Lease and (ii) any payments made to Borrowers relating to unamortized tenant improvements and leasing commissions under any Lease.

Legal Requirements: statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Borrower, any Loan Document or all or part of the Property or the construction, ownership, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to any Borrower, at any time in force affecting all or part of the Property.

Lender's Consultant: a licensed hydrogeologist, licensed environmental engineer or other qualified environmental consulting firm engaged by Lender

Lien: any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any part of the Property or any interest therein, or any direct or indirect interest in any Borrower, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

Loan Documents: this Agreement and all other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Lender in connection with the Loan, including the following, each of which is dated as of the date hereof:

(i) the Promissory Note made by Original Borrower to Lender in the aggregate principal amount equal to the Loan (the "*Note*"),

(ii) the Mortgage, Assignment of Leases and Rents and Security Agreement made by Original Borrower in favor of Lender which covers the Property (the "*Mortgage*"),

(iii) the Assignment of Leases and Rents from Original Borrower to Lender,

(iv) the Assignment of Agreements, Licenses, Permits and Contracts from Original Borrower to Lender,

(v) the Guaranty of Recourse Obligations made by Guarantors; and

(vi) the Consent and Subordination of Manager between Original Borrower and Manager; as each of the foregoing may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, supplemented or otherwise modified from time to time (including pursuant to Section 9.1.8).

Additionally, from and after any Permitted TIC Transfer, each TIC Transfer Document required by Section 5.26.2(b) shall constitute a Loan Document.

Management Agreement: the management agreement between Original Borrower and Manager, pursuant to which Manager is to manage the Property, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with Section 5.12.

Manager: Fontaine Management, LLC, or any successor, assignee or replacement manager appointed by Borrowers in accordance with Section 5.12.

Material Alteration: any alteration affecting structural elements of the Property the cost of which exceeds $250,000; provided, however, that in no event shall (i) any Required Repairs, (ii) any tenant improvement work performed pursuant to any Lease existing on the date

hereof or entered into hereafter in accordance with the provisions of this Agreement, or (iii) alterations performed as part of a Restoration, constitute a Material Alteration.

Material Lease: all Leases which individually or in the aggregate with respect to the same tenant and its Affiliates (i) cover more than 10,000 square feet of the Improvements or (ii) have a gross annual rent of more than 5% of the total annual Rents or (iii) demise at least one full floor of the Improvements.

Maturity Date: the date on which the final payment of principal of the Note becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Mezzanine Borrower: One or more of the members of the Borrowers, but in no event shall Mezzanine Borrower be any Borrower.

Mezzanine Loan Documents: all documents, agreements or instruments evidencing, securing or delivered in connection with any Approved Mezzanine Loan.

Mezzanine Loan Liens: Liens on the membership interests in Original Borrower pursuant to an Approved Mezzanine Loan, but not including any Lien whatsoever on the Property or any other collateral for the Loan.

Minor Lease: any Lease that is not a Material Lease.

Net Operating Income: for any period, the underwritten net cash flow of the Property determined by Lender in its sole and absolute discretion in accordance with Lender's then current underwriting standards for loans of this type and the then current underwriting standards of the Rating Agencies (including adjustments for market vacancy, bankrupt tenants, leasing costs and capital items).

Officer's Certificate: a certificate delivered to Lender by Borrowers, which is signed by a senior executive officer of Original Borrower.

Original Borrower: Fontaine Business Park, LLC, a Delaware limited liability company .

Other Charges: all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

Payment Date: the 6th day of each calendar month or, upon Lender's exercise of its right to change the Payment Date in accordance with Section 2.2.4, the New Payment Date (in either case, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter).

Permitted Encumbrances: (i) the Liens created by the Loan Documents, (ii) all Liens and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes or

Other Charges not yet due and payable and not delinquent, (iv) any workers', mechanics' or other similar Liens on the Property provided that any such Lien is bonded or discharged within 60 days after Borrower first receives notice of such Lien, (v) such other title and survey exceptions as Lender approves in writing in Lender's discretion, and (vi) the Mezzanine Loan Liens.

Permitted Fund Manager: any Person that on the date of determination is (i) any nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least $250,000,000 and (iii) not subject to a Proceeding.

Permitted TIC Transfer: a TIC Transfer and a TIC Transfer and Assumption, each pursuant to, and subject to the satisfaction of the conditions set forth in, subsections (a), (b) or (c) of Section 5.26.2, as applicable.

Permitted Transfers:

(i) a Lease entered into in accordance with the Loan Documents;

(ii) a Permitted Encumbrance;

(iii) a Transfer and Assumption pursuant to Section 5.26.3;

(iv) a Permitted TIC Transfer;

(v) provided that no Event of Default shall then exist (or, if an Event of Default exists, the Transfer of the subject tenant-in-common interest will cure such Event of Default), a conveyance or assignment of a tenant-in-common interest in the Property from one existing Borrower to any other existing Borrower or to U.S. Advisors or its Affiliates in accordance with the terms and provisions of the Tenant in Common Agreement and this Agreement (provided that Original Borrower shall continue to retain not less than a one percent tenant in common interest in the Property);

(vi) provided that no Event of Default shall then exist, a Transfer of a direct or indirect interest in any Borrower to any Person, provided that:

(A) such Transfer shall not:

(w) with respect to any Borrower, cause the transferee (other than a Key Principal, an Approved Control Party or an Approved Mezzanine Lender), together with its Affiliates, to acquire Control of any Borrower or to increase its direct or indirect interest in any Borrower to an amount which equals or exceeds 49%, or

(x) with respect to Original Borrower, result in Original Borrower no longer being Controlled by a Key Principal, an Approved Control Party or an Approved Mezzanine Lender, or

(y) cause such Borrower to fail to maintain its status as a Special Purpose Bankruptcy Remote Entity, or

(z) cause a breach of any covenant in Section 5.32.

(B) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 10 days prior to the date of such Transfer, and

(C) the legal and financial structure of each of the Borrowers and their members and the single purpose nature and bankruptcy remoteness of each of the Borrowers and their members after such Transfer shall satisfy Lender's then current applicable underwriting criteria and requirements;

(vii) provided that no Event of Default shall then exist, a Transfer of a direct or indirect interest in a Borrower related to or in connection with the estate planning of such transferor to (1) the spouse, children or grandchildren of such transferor or (2) a trust established for the benefit of such parties, provided that:

(A) such Transfer shall not cause a change in the Control of any Borrower;

(B) such Transfer shall not result in a change of the day-to-day management and operations of the Property;

(C) Borrowers shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 10 days after the date of such Transfer; and

(D) the legal and financial structure of the applicable Borrower, and the single purpose nature and bankruptcy remoteness of such Borrower after such Transfer, shall satisfy Lender's then current applicable underwriting criteria and requirements; or

(viii) a Transfer of a direct or indirect interest in any Borrower that occurs by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest to a member of the immediate family of such interest holder or a trust established for the benefit of such immediate family member, provided that:

(A) no such Transfer shall result in a change of the day-to-day operations of the Property;

(B) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 20 days after the date of such Transfer;

(C) such Borrower shall continue to be a Special Purpose Bankruptcy Remote Entity; and

(D) if any such Transfer would result in a change of Control of such Borrower, at Borrower's sole cost and expense, shall (a) obtain the prior written consent of Lender which shall not be unreasonably withheld, unless such Transfer of Control has occurred

with respect to a TIC Borrower that owns less than a 5% tenant in common interest in the Property and is to an Approved TIC Borrower Control Party (in which case Lender's consent shall not be required under this subclause (a)), and (b) reimburse Lender for all reasonable expenses incurred by Lender in connection with such Transfer.

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

Plan: (i) an employee benefit or other plan established or maintained by a Borrower or any ERISA Affiliate or to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

Proceeding: the commencement, whether voluntary or involuntary, of any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors.

Property: the parcel of real property and Improvements thereon owned by Borrowers and encumbered by the Mortgage; together with all rights pertaining to such real property and Improvements, and all other collateral for the Loan as more particularly described in the granting clauses of the Mortgage and referred to therein as the Property. The Property is located in Richland County, South Carolina.

Property Agreements: The Tenant in Common Agreement and the Management Agreement.

Qualified Lender: means one or more of the following (other than Borrower or an affiliate thereof):

(A) any bank, savings and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (A) or (B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by any of the entities described in clauses (A) through (C) above;

(E) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations ("***CDO***") secured by or financing through an "owner trust" of, the Mezzanine Debt (collectively, "***Securitization Vehicles***"), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Lenders under clauses (A), (B), (C) or (D) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Qualified Lenders under clauses (A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, or manager fails to meet the requirements of this clause (E), such Person must be replaced by a Person meeting the requirements of this clause (E) within thirty (30) days; or

(F) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Lender under clauses (A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Lenders under clauses (A), (B), (C) or (D) of this definition; or

(G) any lending entity party to an Approved Mezzanine Loan transaction with respect to which a Rating Comfort Letter has been given.

Qualified Trustee: (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies (as defined in Section 33 below).

Rating Agency: each of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("***S&P***"), Moody's Investors Service, Inc. ("***Moody's***"), and Fitch, Inc., a division of Fitch Ratings Ltd. ("***Fitch***") or any other nationally-recognized statistical rating organization to the extent any of the foregoing have been engaged by Lender or its designee in connection with or in anticipation of any Secondary Market Transaction.

Rating Comfort Letter: a letter issued by each of the applicable Rating Agencies which confirms that the taking of the action referenced to therein will not result in any qualification, withdrawal or downgrading of any existing ratings of Securities created in a Secondary Market Transaction. In the event that no Certificates are outstanding or the loan secured by this Instrument is not part of a Secondary Market Transaction, any action that would otherwise require a Rating Comfort Letter shall require the consent of the Lender, which consent shall not be unreasonably withheld or delayed.

Release Date: the earlier to occur of (i) the forty-second (42nd) Payment Date of the Term and (ii) the date that is two (2) years from the "startup day" (within the meaning of Section 860G(a)(9) of the Code) of the REMIC Trust established in connection with a Securitization involving this Loan.

REMIC Trust: a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note.

Rents: all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower, Manager or any of their agents or employees from any and all sources arising from or attributable to the Property and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, Manager or any of their agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

Required Special Servicer Rating: (i) a rating of "CSS1" in the case of Fitch, (ii) on the S&P list of approved special servicers in the case of S&P and (iii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination, and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

Scheduled Defeasance Payments: the Monthly Debt Service Payment Amount required under the Note for all Payment Dates occurring after the Defeasance Date (including the outstanding Principal balance on the Note as of the Stated Maturity Date).

Security Agreement: a security agreement in form and substance that would be satisfactory to Lender (in Lender's sole but good faith discretion) pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

Servicer: a servicer selected by Lender to service the Loan, including any "master servicer" or "special servicer" appointed under the terms of any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction.

State: the state in which the Property is located.

Stated Maturity Date: January 6, 2018, as such date may be changed in accordance with Section 2.2.4.

Taxes: all real estate and personal property taxes, assessments, water rates or sewer rents, maintenance charges, impositions, vault charges and license fees, now or hereafter levied or assessed or imposed against all or part of the Property.

Tenant in Common Agreement: a tenant in common agreement to be entered into by Original Borrower and any TIC Borrowers upon the initial TIC Transfer, if such transfer occurs, pursuant to Section 5.26.2, as the same may thereafter be assumed by subsequently admitted TIC Borrowers in accordance with Section 5.26.2.

Term: the entire term of this Agreement, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by Borrowers pursuant to the Loan Documents.

Title Insurance Policy: the ALTA mortgagee title insurance policy in the form acceptable to Lender issued with respect to the Property and insuring the Lien of the Mortgage.

Transfer: any sale, conveyance, transfer, Lease or assignment, or the entry into any agreement to sell, convey, transfer, lease or assign, whether by law or otherwise, of, on, in or affecting (i) all or part of the Property (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in any Borrower (including any profit interest or rights to distributions of cash), or (iii) any change in Control of a Borrower. For purposes hereof, (i) a Transfer of an interest in a Borrower shall be deemed to include (A) if such Borrower or controlling shareholder of such Borrower 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 one or a series of transactions by which an aggregate of more than ten percent (10%) 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 and (B) if such Borrower or controlling shareholder of such Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member and (ii) a change of Control of such Borrower shall be deemed to have occurred if (A) there is any change in the identity of any individual or entity or any group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause such Borrower to take some action or to prevent, restrict or impede such Borrower from taking some action which, in either case, such Borrower could take or could refrain from taking were it not for the rights of such individuals or (B) the individual or entity or group of individuals or entities that Control such Borrower as described in clause (A) ever cease to own at least fifty-one percent (51%) of all equity interests (direct or indirect) in such Borrower.

Treasury Rate: the annualized yield on securities issued by the United States Treasury having a maturity corresponding to the remaining term to the originally scheduled Stated Maturity Date of this Note, as quoted in Federal Reserve Statistical Release H. 15(519) under the heading "U.S. Government Securities - Treasury Constant Maturities" for the Treasury Rate

Determination Date, converted to a monthly equivalent yield. If yields for such securities of such maturity are not shown in such publication, then the Treasury Rate shall be determined by Lender by linear interpolation between the yields of securities of the next longer and next shorter maturities. If said Federal Reserve Statistical Release or any other information necessary for determination of the Treasury Rate in accordance with the foregoing is no longer published or is otherwise unavailable, then the Treasury Rate shall be reasonably determined by Lender based on comparable data.

Treasury Rate Determination Date: the date which is five banking days prior to the scheduled prepayment date. Lender shall notify Borrower of the amount and the basis of determination of the required Yield Maintenance Premium.

UCC: the Uniform Commercial Code as in effect in the state of Delaware or the state in which any of the Cash Accounts are located, as the case may be.

U.S. Advisors: U.S. Advisor LLC, 5 Financial Plaza, Suite 205, Napa, California 92694.

U.S. Obligations: obligations that are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, and, to the extent acceptable to the applicable Rating Agencies, other non-callable government securities satisfying the REMIC Provisions (hereinafter defined), in each case to the extent such obligations are not subject to prepayment, call or early redemption. As used herein, "REMIC Provisions" mean provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Sections 860A through 860G of Subchapter M of Chapter 1 of Subtitle A of the Code, and related provisions, and temporary and final regulations and, to the extent not inconsistent with such temporary and final regulations, proposed regulations, and published rulings, notices and announcements promulgated thereunder, as the foregoing may be in effect from time to time.

Welfare Plan: an employee welfare benefit plan, as defined in Section 3(1) of ERISA.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under this Agreement through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amount and/or Monthly Interest Payment Amount, as the case may be, required under this Agreement through the Stated Maturity Date together with the outstanding principal balance of the Note as of the Stated Maturity Date assuming all such Monthly Debt Service Payment Amounts and/or Monthly Interest Payment Amounts, as the case may be, are made (including any servicing costs associated therewith). In no event shall the Yield Maintenance Premium be less than zero.

1.2 **Index of Other Definitions**. The following terms are defined in the sections or Loan Documents indicated below:
"*Annual Budget*" - 6.3.5
"*Applicable Taxes*" - 2.2.3
"*Approved Annual Budget*" - 6.3.5

"*Approved Capital Budget*" - 6.3.5
"*Approved Operating Budget*" - 6.3.5
"*Award*" - 7.3.2
"*Bankruptcy Proceeding*" - 4.7
"*Borrower's Recourse Liabilities*" - 10.1
"*Capital Reserve Account*" - 3.4
"*Cash Accounts*" - 3.11
"*Casualty*" - 7.2.1
"*Casualty/Condemnation Prepayment*" - 2.3.2
"*Casualty/Condemnation Account*" - 3.8
"*Condemnation*" 7.3.1
"*Defeasance Collateral Account*" - *2.3.3*
"*Defeasance Event*" - *2.3.3*
"*Defeasance Date*" - *2.3.3*
"*Disclosure Document*" - 9.1.2
"*DSCR*" – 5.12.2
"*Easements*" - 4.14
"*Endorsement*" - 5.26.3
"*Environmental Laws*" - 4.21
"*Equipment*" - Mortgage
"*Event of Default*" - 8.1
"*Exchange Act*" - 9.1.2
"*Fitch*" - 1.1 (Definition of Rating Agency)
"*GCM Group*" - 9.1.3
"*Government Lists*" - 5.33
"*Hazardous Substances*" - 4.21
"*Improvements*" - Mortgage
"*Indemnified Liabilities*" - 5.30
"*Indemnified Party*" - 5.30
"*Insolvency Action*" – 10.1.3
"*Insurance Premiums*" - 7.1.2
"*Insured Casualty*" - 7.2.2
"*Issuer*" - 9.1.3
"*Late Payment Charge*" - 2.5.3
"*Leasing Reserve Account*" – 3.6
"*Lender's Losses*" – 10.1.2
"*Liabilities*" - 9.1.3
"*Licenses*" - 4.11
"*Loan*" - 2.1
"*Monthly Debt Service Payment Amount*" - 2.2.1
"*Monthly Interest Payment Amount*" - 2.2.1
"*Moody's*" - 1.1 (Definition of Rating Agency)
"*Mortgage*" - 1.1 (Definition of Loan Documents)
"*New Payment Date*" - 2.2.4
"*Note*" – 1.1(Definition of Loan Documents)
"*Notice*" - 6.1

"*O&M Program*" - 5.8.3
"*OFAC*" - 5.33
"*Patriot Act*" - 5.33
"*Patriot Act Offense*" - 5.33
"*Permitted Indebtedness*" - 5.22
"*Permitted Prepayment Date*" - 2.3.4
"*Policies*" - 7.1.2
"*Principal*" - 2.1
"*Proceeds*" - 7.2.2
"*Proposed Material Lease*" - 5.10.2
"*Protective Advances*" – 8.25
"*Provided Information*" - 9.1.1
"*Qualified Carrier*" - 7.1.1
"*Reasonable Attorney's Fees*" – 10.29
"*Registration Statement*" - 9.1.3
"*Remedial Work*" - 5.8.2
"*REMIC Provisions*" – 1.1 (Definition of U.S. Obligations)
"*Renewal Option Deadline*" – 3.6
"*Rent Roll*" - 4.16
"*Required Records*" - 6.3.6
"*Required Repairs*" - 3.2.1
"*Required Repairs Account*" - 3.2.2
"*Restoration*" - 7.4.1
"*Rollover Reserve Cap*" – 3.5
"*Rollover Reserve Account*" - 3.5
"*S&P*" - 1.1 (Definition of Rating Agency)
"*Secondary Market Transaction*" - 9.1.1
"*Securities*" - 9.1.1
"*Securities Act*" - 9.1.2
"*Security Deposit Account*" – 3.7
"*Significant Casualty*" - 7.2.2
"*Special Purpose Bankruptcy Remote Entity*" - Schedule 4
"*Springing Recourse Event*" - 10.1.3"
"*Substitute TIC Borrower*" - 5.26.2
"*Successor Borrower*" - 2.3.3
"*Tax and Insurance Account*" - 3.3.1
"*Termination Tenant*" – 3.6
"*TIC Borrowers*" - 5.26.2
"*TIC Owner*" - 5.26.2
"*TIC Transfer*" – 5.26.2
"*TIC Transfer and Assumption*" - 5.26.2
"*TIC Transfer Documents*" - 5.26.2
"*Toxic Mold*" - 4.21
"*Transfer and Assumption*" - 5.26.3
"*Transferee Borrower*" - 5.26.3
"*Underwriter Group*" - 9.1.3

"*Underwriters*" - 9.1.3

1.3 **Principles of Construction**. Unless otherwise specified, (i) all references to sections and schedules are to those in this Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined, (iv) the word "including" means "including but not limited to," and (v) accounting terms not specifically defined herein shall be construed in accordance with GAAP.

2. GENERAL LOAN TERMS

2.1 **The Loan**. Lender is making a loan (the "***Loan***") to Original Borrower on the date hereof, in the original principal amount (the "***Principal***") of $16,300,000, which shall mature on the Stated Maturity Date. Original Borrower acknowledges receipt of the Loan, the proceeds of which are being and shall be used to (i) acquire the Property, (ii) fund certain of the Accounts, and (iii) pay transaction costs. Any excess proceeds may be used for any lawful purpose. No amount repaid in respect of the Loan may be reborrowed.

2.2 **Interest; Monthly Payments**.

2.2.1 **Generally**.

(a) From and after the date of funding, interest on the unpaid Principal shall accrue at the Interest Rate and be payable as hereinafter provided.

(b) On the date hereof, Borrower shall pay interest on the unpaid Principal from the date of funding through and including January 5, 2008.

(c) On February 6, 2008 and each Payment Date thereafter through and including January 6, 2011, Borrowers shall pay to Lender all unpaid interest accrued on the Principal at the Interest Rate (the "***Monthly Interest Payment Amount***").

(d) On February 6, 2011 and each Payment Date thereafter through and including December 6, 2017, the Principal and interest thereon at the Interest Rate shall be payable in equal monthly installments of [___] Dollars ($____)(the "***Monthly Debt Service Payment Amount***"); which is based on the Interest Rate and a 30 year amortization schedule; each of such payments to be applied (a) to the payment of interest computed at the rate aforesaid; and (b) the balance applied toward the reduction of the principal sum;

(e) All accrued and unpaid interest shall be due and payable on the Maturity Date. If the Loan is repaid on any date other than on a Payment Date (whether prior to or after the Stated Maturity Date), Borrower shall also pay interest that would have accrued on such repaid Principal to but not including the next Payment Date.

2.2.2 **Default Rate**. After the occurrence and during the continuance of an Event of Default, the entire unpaid Debt shall bear interest at the Default Rate, and shall be payable upon demand from time to time, to the extent permitted by applicable law.

2.2.3 Taxes.

(a) Any and all payments by Borrower hereunder and under the other Loan Documents shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on Lender's income, and franchise taxes imposed on Lender by the law or regulation of any Governmental Authority (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to in this Section 2.2.3 as "*Applicable Taxes*").

(b) If any Borrower shall be required by law to deduct any Applicable Taxes from or in respect of any sum payable hereunder to Lender, the following shall apply: (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.2.3), Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. Payments pursuant to this Section 2.2.3 shall be made within ten days after the date Lender makes written demand therefor.

(c) Notwithstanding the foregoing, if the Loan is transferred to a transferee which is organized under the laws of any jurisdiction other than the United States of America or any state thereof, the transferor shall cause such transferee, concurrently with the effectiveness of such transfer, to furnish to the transferor and Borrowers either a United States Internal Revenue Service Form 4224 or United States Internal Revenue Service Form 1001 (wherein such transferee claims entitlement to complete exemption from United States federal withholding tax on all interest payments hereunder); provided, however, that in the event that the transferor fails to cause the transferee to furnish either such Form, Borrowers shall deduct any Applicable Taxes to the extent required by law and payments shall be made net of any Applicable Taxes without regard to the provisions of clause (i) of the second sentence of this Section 2.2.3.

2.2.4 New Payment Date. Lender shall have the right, to be exercised not more than once during the term of the Loan, to change the Payment Date to a date other than the 6th day of each month (a "*New Payment Date*"), on 30 days' written notice to Borrowers; provided, however, that any such change in the Payment Date: (i) shall not modify the amount of regularly scheduled monthly principal and interest payments, except that the first payment of principal and interest payable on the New Payment Date shall be accompanied by interest at the interest rate herein provided for the period from the Payment Date in the month in which the New Payment Date first occurs to the New Payment Date, and (ii) shall extend the Stated Maturity Date to the New Payment Date occurring in the month set forth in the definition of Stated Maturity Date.

2.3 Loan Repayment.

2.3.1 Repayment.

(a) Borrowers shall repay the entire outstanding Principal in full on the Maturity Date, together with interest thereon to the date of repayment and any other amounts

due and owing under the Loan Documents. Borrowers shall have no right to prepay all or any portion of the Principal except in accordance with Section 2.3.2, Section 2.3.3, Section 2.3.4 and Section 2.4 below.

(b) Except during the continuance of an Event of Default, all proceeds of any repayment, including any prepayments of the Loan, shall be applied by Lender as follows in the following order of priority: *First*, accrued and unpaid interest at the Interest Rate; *Second*, to Principal; and *Third*, to any other amounts then due and owing under the Loan Documents.

(c) If prior to the Stated Maturity Date the Debt is accelerated by reason of an Event of Default, then Lender shall be entitled to receive, in addition to the unpaid Principal and accrued interest and other sums due under the Loan Documents, an amount equal to the Yield Maintenance Premium applicable to such Principal so accelerated. During the continuance of an Event of Default, all proceeds of repayment, including any payment or recovery on the Property (whether through foreclosure, deed-in-lieu of foreclosure, or otherwise) shall, unless otherwise provided in the Loan Documents, be applied in such order and in such manner as Lender shall elect in Lender's discretion.

2.3.2 Mandatory Prepayments. The Loan is subject to mandatory prepayment in certain instances of Insured Casualty or Condemnation (each a "***Casualty/Condemnation Prepayment***"), in the manner and to the extent set forth in Section 7.4.2. Each Casualty/Condemnation Prepayment, after deducting Lender's costs and expenses (including reasonable attorneys' fees and expenses) in connection with the settlement or collection of the Proceeds or Award, shall be applied in the same manner as repayments under Section 2.3.1, and if such Casualty/Condemnation Payment is made on any date other than a Payment Date, then such Casualty/Condemnation Payment shall include interest that would have accrued on the Principal prepaid to but not including the next Payment Date. Provided that no Event of Default is continuing, any such mandatory prepayment referred to in this Section 2.3.2 shall be without the payment of the Yield Maintenance Premium. Notwithstanding anything to the contrary contained herein, each Casualty/Condemnation Prepayment shall be applied in inverse order of maturity and shall not extend or postpone the due dates of the monthly installments due under the Note or this Agreement, or change the amounts of such installments.

2.3.3 Defeasance

(a) Conditions to Defeasance. Provided no Event of Default shall be continuing, Borrower shall have the right on any Payment Date after the Release Date and prior to the Permitted Prepayment Date to voluntarily defease the entire amount of the Principal and obtain a release of the Lien of the Mortgage by providing Lender with the Defeasance Collateral (a "***Defeasance Event***"), subject to the satisfaction of the following conditions precedent:

(i) Borrower shall give Lender not less than thirty (30) days prior written notice specifying a Payment Date (the "***Defeasance Date***") on which the Defeasance Event is to occur.

(ii) Borrower shall pay to Lender (A) all payments of Principal and interest due on the Loan to and including the Defeasance Date and (B) all other sums, then due under the Note, this Agreement and the other Loan Documents;

(iii) Borrower shall deposit the Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of subsections (b) and (c) of this Section 2.3.3;

(iv) Borrower shall execute and deliver to Lender a Security Agreement in respect of the Defeasance Collateral Account and the Defeasance Collateral;

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral, and (B) if a securitization has occurred, the REMIC Trust formed pursuant to such securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of a Defeasance Event pursuant to this Section 2.3.3;

(vi) if required by any Rating Agency, Borrower shall deliver to Lender a Rating Comfort Letter as to the Defeasance Event;

(vii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.3.3 have been satisfied;

(viii) Borrower shall deliver a certificate of a nationally recognized public accounting firm acceptable to Lender certifying that (A) the Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments, (B) the revenue from the Defeasance Collateral will be applied within four (4) months of receipt towards payments of Debt Service, (C) the securities that comprise the Defeasance Collateral are not subject to prepayment, call or early redemption and (D) the interest income to Borrower (or the Successor Borrower, if applicable) from the Defeasance Collateral will not in any tax year exceed the interest expense associated with the defeased Loan;

(ix) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;

(x) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including Lender's reasonable attorneys' fees and expenses and Rating Agency fees and expenses, and

(xi) At Lender's sole option, all obligations with respect to any Approved Mezzanine Loan shall have been fully paid and performed.

(b) **Defeasance Collateral Account**. On or before the date on which Borrower delivers the Defeasance Collateral, Borrower shall open at any Eligible Institution the defeasance collateral account (the "***Defeasance Collateral Account***") which shall at all times be

an Eligible Account. The Defeasance Collateral Account shall contain only (i) Defeasance Collateral, and (ii) cash from interest and principal paid on the Defeasance Collateral. All cash from interest and principal payments paid on the Defeasance Collateral shall be paid over to Lender on each Payment Date and applied first to accrued and unpaid interest and then to Principal. Any cash from interest and principal paid on the Defeasance Collateral not needed to pay accrued and unpaid interest or Principal shall be retained in the Defeasance Collateral Account as additional collateral for the Loan. Borrower shall cause the Eligible Institution at which the Defeasance Collateral is deposited to enter an agreement with Borrower and Lender, satisfactory to Lender in its sole discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Defeasance Collateral in accordance with this Agreement. The Successor Borrower shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower shall prepay all cost and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

(c) Successor Borrower. In connection with a Defeasance Event under this Section 2.3.3, Borrower shall, if required by the Rating Agencies or if Borrower elects to do so, establish or designate a successor entity (the "***Successor Borrower***") which shall be a Special Purpose Bankruptcy Remote Entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrower's option, be an Affiliate of Borrower unless the Rating Agencies shall require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Defeased Note, together with the Defeasance Collateral to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay a minimum of $1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorney's fees and expenses, incurred in connection therewith.

2.3.4 Optional Prepayments: From and after the third Payment Date prior to the Stated Maturity Date (the "**Permitted Prepayment Date**"), Borrower shall have the right to prepay all or any portion of the Principal, provided that Borrower gives Lender at least 15 days' prior written notice thereof. If any such prepayment is not made on a Payment Date, Borrower shall also pay interest that would have accrued on such prepaid Principal to, but not including, the next Payment Date. Any such prepayment from and after the Permitted Prepayment Date shall be made without payment of the Yield Maintenance Premium.

2.4 Release of Property.

2.4.1 Release on Defeasance. If Borrower has elected to defease the Note and the requirements of Section 2.3.3 above and this Section 2.4 have been satisfied, the Property shall be released from the Lien of the Mortgage and the Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection with the release of the Lien, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents) for execution by Lender. Such release shall be in

a form appropriate in the jurisdiction in which the Property is located and contain standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the release of the Lien of the Mortgage, including Lender's attorneys' fees.

2.4.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrowers, upon payment in full of the Debt in accordance herewith, release or, if requested by Borrowers, assign as directed by Borrowers (without any representation or warranty by and without any recourse against Lender whatsoever), the Lien of the Loan Documents if not previously released.

2.5 Payments and Computations.

2.5.1 Making of Payments. Each payment by a Borrower or Borrowers shall be made in funds settled through the New York Clearing House Interbank Payments System or other funds immediately available to Lender by 11:00 am., New York City time, on the date such payment is due, to Lender by deposit to such account as Lender may designate by written notice to Borrowers. Whenever any such payment shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day thereafter. All such payments shall be made irrespective of, and without any deduction, set-off or counterclaim whatsoever and are payable without relief from valuation and appraisement laws and with all costs and charges incurred in the collection or enforcement thereof, including reasonable attorneys' fees and court costs.

2.5.2 Computations. Interest payable under the Loan Documents shall be computed on the basis of the actual number of days elapsed over a 360-day year.

2.5.3 Late Payment Charge. If any Principal, interest or other sum due under any Loan Document is not paid by Borrowers on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by applicable law (the "*Late Payment Charge*"), in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Such amount shall be secured by the Loan Documents.

3. RESERVES

3.1 [Intentionally deleted].

3.2 Required Repairs.

3.2.1 Completion of Required Repairs. Borrowers shall perform and complete each item of the repairs and environmental remedial work at the Property described on Schedule 1 (the "*Required Repairs*") within six (6) months of the date hereof or such shorter period of time for such item set forth on Schedule 1.

3.2.2 Required Repairs Reserves. On the date hereof, Borrowers shall deposit with Lender the sum of $93,693 and Lender shall cause such amount to be transferred to a Account (the "*Required Repairs Account*"). Provided no Default or Event of Default shall have occurred and is continuing, Lender shall disburse funds held in the Required Repairs Account to Borrowers within fifteen (15) days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000, accompanied by the following items (which items shall be in form and substance reasonably satisfactory to Lender): (i) an Officer's Certificate (A) certifying that the Required Repairs or any portion thereof which are the subject of the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (B) identifying each Person that supplied materials or labor in connection with such Required Repairs or any portion thereof and (C) stating that each such Person has been or, upon receipt of the requested disbursement, will be paid in full with respect to the portion of the Required Repairs which is the subject of the requested disbursement; (ii) copies of appropriate Lien waivers or other evidence of payment satisfactory to Lender; (iii) at Lender's option, a title search for the Property indicating that it is free from all Liens not previously approved by Lender; (iv) a copy of each License required to be obtained with respect to the portion of the Required Repairs which is the subject of the requested disbursement; and (v) such other evidence as Lender shall reasonably request that the Required Repairs which are the subject of the requested disbursement have been completed and paid for. Provided no Default or Event of Default shall have occurred and is continuing, upon Borrowers' completion of all Required Repairs in accordance with this Section 3.2, Lender shall release any funds remaining in the Required Repairs Account, if any, to Borrowers.

3.3 Taxes and Insurance.

3.3.1 Borrowers shall pay to Lender on each Payment Date (i) one-twelfth of the Taxes that Lender estimates will be payable during the next 12 months in order to accumulate with Lender sufficient funds to pay all such Taxes at least 30 days prior to their respective due dates and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least 30 days prior to the expiration of the Policies. Such amounts will be transferred by Lender to a Account (the "*Tax and Insurance Account*"). Provided that no Default or Event of Default has occurred and is continuing, Lender will (a) apply funds in the Tax and Insurance Account to payments of Taxes and Insurance Premiums required to be made by Borrowers pursuant to Sections 5.2 and 7.1, provided that Borrowers have promptly supplied Lender with notices of all Taxes and Insurance Premiums due, or (b) reimburse Borrowers for such amounts upon presentation of evidence of payment; subject, however, to Borrowers' right to contest Taxes in accordance with Section 5.2. In making any payment relating to Taxes and Insurance Premiums, 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 Lender determines in its reasonable judgment that the funds in the Tax and Insurance Account will be insufficient to pay (or in excess of) the Taxes or Insurance Premiums next coming due, Lender may increase (or decrease) the monthly contribution required to be made by Borrowers to the Tax and Insurance Account.

3.4 Capital Expense Reserves. Borrowers shall pay to Lender on the date hereof the amount of $5,249, and on each Payment Date hereafter an amount equal to $5,249. Lender will transfer such amounts into a Account (the "**Capital Reserve Account**"). Upon thirty (30) days' prior notice to Borrowers, Lender may reassess the amount of the monthly payment required under this Section 3.4 from time to time in its reasonable discretion (based upon its then current underwriting standards). Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Capital Reserve Account to Borrowers, within 15 days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000 (or in the case of the final payment, in the full amount thereof) provided that (i) such disbursement is for an Approved Capital Expense; (ii) Lender shall have (if it desires) verified (by an inspection conducted at Borrowers' expense) performance of the work associated with such Approved Capital Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay or reimburse Borrowers for Approved Capital Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used to pay the previously identified Approved Capital Expenses, and (B) lien waivers or other evidence of payment satisfactory to Lender, (C) at Lender's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender and (D) such other evidence as Lender shall reasonably request that the Approved Capital Expenses at the Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrowers. Any such disbursement of more than $10,000 to pay (rather than reimburse) Approved Capital Expenses may, at Lender's option, be made by joint check payable to Borrowers and the payee on such Approved Capital Expenses. Lender shall deposit the funds in the Capital Reserve Account, as received, in an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time. (Such funds shall include the funds in the Capital Reserve Account, the account, all interest on any funds referred to herein, and all proceeds of any of the foregoing). Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. All interest earned on the funds in the Capital Reserve Account shall be added to and become part of such funds and shall be for the benefit of Borrower. Lender shall not be responsible for any losses resulting from the investment of such funds or for obtaining any specific level or percentage of interest earnings on such investment.

3.5 Rollover Reserves.

(a) Upon the making of the Loan, Borrowers shall make an initial deposit with Lender in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00). Lender will transfer such amount to a Account (the "***Rollover Reserve Account***"). On each Payment Date commencing on the thirty-seventh (37th) Payment Date, Borrowers shall deposit with Lender the sum of $21,086.50 (the "***Monthly Rollover Deposit***") and Lender shall cause such amount to be transferred to the Rollover Reserve Account; provided, however, that if the balance in the Rollover Reserve Account is less than $250,000 at any time prior to the forty-ninth (49th) Payment Date, the Borrower shall commence making the Monthly Rollover Deposit on the next succeeding Payment Date and shall continue making such deposits until the balance again equals

not less than $250,000. Borrowers shall also pay to Lender for transfer into the Rollover Reserve Account all Lease Termination Payments received by Borrowers. If Lender determines in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses, Lender may increase (or decrease) the monthly contribution required to be made by Borrowers to the Rollover Reserve Account. Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Rollover Reserve Account to Borrowers upon Borrower's written request to Lender, within 15 days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000, (or in the case of the final payment, in the full amount thereof) provided (i) such disbursement is for an Approved Leasing Expense; (ii) Lender shall have (if it desires) verified (by an inspection conducted at Borrowers' expense) performance of any construction work associated with such Approved Leasing Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used only to pay (or reimburse Borrowers for) Approved Leasing Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used only to pay (or reimburse Borrowers for) the previously identified Approved Leasing Expenses, and (B) reasonably detailed supporting documentation as to the amount, necessity and purpose therefor. Any such disbursement of more than $10,000 to pay (rather than reimburse) Approved Leasing Expenses may, at Lender's option, be made by joint check payable to Borrowers and the payee of such Approved Leasing Expenses. Lender shall deposit the funds in the Rollover Reserve Account, as received, in an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time. (Such funds shall include the funds in the Rollover Reserve Account, the account, all interest on any funds referred to herein, and all proceeds of any of the foregoing). Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. All interest earned on the funds in the Rollover Reserve Account shall be added to and become part of such funds and shall be for the benefit of Borrower. Lender shall not be responsible for any losses resulting from the investment of such funds or for obtaining any specific level or percentage of interest earnings on such investment.

(b) Any Lease Termination Payments and any other funds deposited into the Rollover Reserve Account shall be applied, at Lender's election, towards either (a) subject to the rights of Borrower under the applicable Lease, rent arrearages under such Lease (or to cure any other tenant default under such Lease), (b) debt service shortfalls that may arise as a result of a termination of such Lease (and Borrower hereby authorizes Lender to disburse to itself any such amounts without any request therefor by Borrower) or (c) funding any Approved Leasing Expenses which are anticipated to occur in connection with the re-tenanting of the space under the Lease that was the subject of such termination.

3.6 Leasing Reserve. Upon the making of the Loan, Borrowers shall make an initial deposit with Lender in the amount of Fifty Thousand Dollars ($50,000.00). Lender will transfer such amount to a Account (the "***Leasing Reserve Account***"). Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Leasing Reserve Account to Borrowers upon Borrower's written request to Lender, within 15 days after

FBPAPP-0080

the delivery by Borrowers to Lender of a request therefor, at such time as Borrowers have effectuated all rental increases under currently effective Leases of the Property scheduled to occur on or before May, 31, 2008 and Borrower shall have collected from each applicable Tenant the first such increased rental payment.

3.7 **Security Deposits**. After the occurrence of an Event of Default, Borrower shall deliver to Lender all security deposits (and any interest theretofore earned thereon) under Leases, and, if requested by Lender, Borrower shall also deliver any letters of credit (delivered in lieu of a cash security deposit), assigned with full power of attorney and executed sight drafts to Lender. Lender will transfer such security deposits into an Account (the "***Security Deposit Account***"), which will be held subject to the terms of the Leases. Borrower shall also deliver to Lender (for deposit into the Security Deposit Account) all amounts drawn under any letters of credit held by Borrower in lieu of cash security deposits. Regardless of whether an Event of Default exists and is continuing, any security deposits held in the Security Deposit Account will be released by Lender upon notice from Borrower together with such evidence as Lender may reasonably request that such security deposit is required to be returned to a tenant pursuant to the terms of a Lease. Any funds in the Security Deposit Account which Borrower is permitted to retain pursuant to the applicable provisions of any Lease shall be transferred by Lender into the Rollover Reserve Account, to be applied and disbursed in accordance with the provisions of Section 3.5 hereof. Any letter of credit or other instrument that Borrower receives in lieu of a cash security deposit under any Lease entered into after the date hereof shall (i) be maintained in full force and effect in the full amount unless replaced by a cash deposit as hereinabove described and (ii) if permitted pursuant to any Legal Requirements, name Lender as payee or mortgagee thereunder (or at Lender's option, be fully assignable to Lender)..

3.8 Borrower shall pay, or cause to be paid, to Lender all Proceeds or Awards due to any Casualty or Condemnation to be transferred to a Account (the "***Casualty/Condemnation Account***") in accordance with the provisions of Article 7 hereof. All amounts in the Casualty/Condemnation Account shall disbursed in accordance with the provisions of Article 7 hereof..

3.9 **[Intentionally deleted]**.

3.10 **[Intentionally deleted]**.

3.11 **Grant of Security Interest; Application of Funds**. As security for payment of the Debt and the performance by Borrowers of all other terms, conditions and provisions of the Loan Documents, each Borrower hereby pledges and assigns to Lender, and grants to Lender a security interest in, all such Borrower's right, title and interest in and to all Rents and in and to all payments to or monies held in all Accounts created pursuant to this Agreement, which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (collectively, the "***Cash Accounts***"). No Borrower shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Cash Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default,

Lender may apply any sums in any Cash Account in any order and in any manner as Lender shall elect in Lender's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Lender to foreclose the Lien of the Mortgage or exercise its other rights under the Loan Documents. Cash Accounts shall not constitute trust funds and may be commingled with other monies held by Lender. All interest which accrues on the funds in any Cash Account (other than the Tax and Insurance Account) shall accrue for the benefit of Borrowers and shall be taxable to Borrowers and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon repayment in full of the Debt, all remaining funds in the Accounts, if any, shall be promptly disbursed to Borrowers.

4. REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to Lender as of the date hereof that, except to the extent (if any) disclosed on Schedule 2 with reference to a specific Section of this Article 4:

4.1 **Organization; Special Purpose**. Each Borrower has been duly organized and is validly existing and in good standing under the laws of the state of Delaware, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Each Borrower is or will be duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Each Borrower is a Special Purpose Bankruptcy Remote Entity.

4.2 **Proceedings; Enforceability**. Each Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents. The Loan Documents have been duly executed and delivered by each Borrower that is a party to such Loan Document and constitute legal, valid and binding obligations of such Borrower enforceable against such Borrower in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents are not subject to, and no Borrower has asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Loan Documents, or any right thereunder, will render any Loan Document unenforceable.

4.3 **No Conflicts**. The execution, delivery and performance of the Loan Documents by Borrowers and the transactions contemplated hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property of any Borrower pursuant to the terms of, any agreement or instrument to which any Borrower is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over any Borrower or any of its properties. No Borrower's rights under the Licenses and the Property Agreements will be adversely affected by the execution and delivery of the Loan Documents, any Borrower's performance thereunder, the recordation of the Mortgage, or the exercise of any remedies by Lender. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and

performance by any Borrower of the Loan Documents has been obtained and is in full force and effect.

4.4 Litigation. There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting any Borrower or the Property, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of any Borrower (including the ability of such Borrower to carry out its obligations under the Loan Documents), Manager, or the condition or ownership of the Property.

4.5 Agreements. No Borrower is a party to any agreement or instrument or subject to any restriction which might materially, adversely affect any Borrower or the Property, or any Borrower's business, properties, operations or condition, financial or otherwise. No Borrower is in default in any material respect in the performance, observance or fulfillment of any agreement or instrument to which any Borrower is a party or by which any Borrower or the Property is bound.

4.6 Title. Borrowers have good, marketable and indefeasible title in fee to the real property and good title to the balance of the Property, free and clear of all Liens except the Permitted Encumbrances.

4.7 No Bankruptcy Filing. No Borrower is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "*Bankruptcy Proceeding*"), and Borrowers have no actual knowledge of any Person contemplating the filing of any such petition against any Borrower.

4.8 Full and Accurate Disclosure. No statement of fact made by any Borrower in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not materially and substantially misleading. There is no material fact presently actually known to any Borrower that has not been disclosed to Lender which adversely affects, or, to Borrower's knowledge, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of any Borrower. To Borrowers' actual knowledge, all financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrowers and the Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Borrower and the Property as of the date of such reports, and (iii) to the extent prepared in accordance with GAAP standards, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Since the date of such financial statements, there has been no material, adverse change in the financial condition, operations or business of any Borrower or the Property from that set forth in said financial statements.

4.9 Tax Filings. To the extent required, each Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have

paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower.

4.10 No Plan Assets. As of the date hereof and throughout the Term (i) no Borrower is or will be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (ii) none of the assets of any Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) no Borrower is or will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with any Borrower are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans. As of the date hereof, no Borrower, nor any member of a "controlled group of corporations" (within the meaning of Section 414 of the Code) maintains, sponsors or contributes to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA) or a "multiemployer pension plan" (within the meaning of Section 3(37)(A) of ERISA).

4.11 Compliance. To each Borrowers' actual knowledge, each Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements (including with respect to parking and applicable zoning and land use laws, regulations and ordinances). No Borrower is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of any Borrower. The Property is used exclusively as a commercial business park and other appurtenant and related uses. In the event that all or any part of the Improvements are destroyed or damaged said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. To Borrower's actual knowledge, no legal proceedings are pending or, threatened with respect to the zoning of the Property. To Borrower's actual knowledge, neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. To Borrower's actual knowledge, all certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property (collectively, the "***Licenses***"), have been obtained and are in full force and effect. To Borrower's actual knowledge, the use being made of the Property is in substantial conformity with all other restrictions, covenants and conditions affecting the Property.

4.12 Contracts. There are no service, maintenance or repair contracts affecting the Property that are not terminable on one month's notice or less without cause and without penalty or premium. To Borrower's actual knowledge, all service, maintenance or repair contracts affecting the Property have been entered into at arms-length in the ordinary course of business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

4.13 Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation

of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document. No Borrower is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) 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 (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.15 Physical Condition. To Borrower's actual knowledge, the Property, including all Improvements, parking facilities, systems, Equipment and landscaping, are in good condition, order and repair in all material respects; there exists no structural or other material defect or damages to the Property, whether latent or otherwise. No Borrower has received actual notice from any insurance company or bonding company of any defect or inadequacy in the Property, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. To Borrower's actual knowledge, no portion of the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards. To Borrower's actual knowledge, the Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

4.16 Leases.

(a) To Borrower's actual knowledge, the rent roll attached hereto as Schedule 7 (the "*Rent Roll*") is true, complete and correct and the Property is not subject to any Leases other than the Leases described in the Rent Roll.

(b) Except as set forth on the Rent Roll: (i) each Lease is in full force and effect; (ii) the tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises, have commenced the payment of rent under the Leases, and there are no offsets, claims or defenses to the enforcement thereof; (iii) all rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than 30 days in advance; (iv) the rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by the tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under any Lease

which remains outstanding, there are no defaults on the part of the landlord under any Lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; (vi) to Borrowers' actual knowledge, there is no present material default by the tenant under any Lease; (vii) all security deposits under Leases are as set forth on the Rent Roll; (viii) Borrowers are the sole owner of the entire lessor's interest in each Lease; (ix) each Lease is the valid, binding and enforceable obligation of such Borrower and the applicable tenant thereunder; (x) no Person has any possessory interest in, or right to occupy, the Property except under the terms of the Lease; and (xi) each Lease is subordinate to the Loan Documents, either pursuant to its terms or pursuant to a subordination and attornment agreement.

(c) None of the Leases contains any option to purchase or right of first refusal to purchase the Property or any part thereof.

(d) Neither the Leases nor the Rents have been assigned or pledged except to Lender, and no other Person has any interest therein except the tenants thereunder.

4.17 Fraudulent Transfer. No Borrower has entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrowers have received reasonably equivalent value in exchange for their obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrowers' assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrowers' total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured (excluding any joint liability under the Loan Documents in excess of the applicable Borrower's general liability thereunder). Borrowers' assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out their business as conducted or as proposed to be conducted. No Borrower intends to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of such Borrower) (excluding any joint liability under the Loan Documents in excess of the applicable Borrower's general liability thereunder).

4.18 Ownership Structure.

(a) Neither Original Borrower nor Fund Manager has any obligation to any Person to purchase, repurchase or issue any ownership interest in Original Borrower or Fund Manager.

(b) The organizational chart attached hereto as Schedule 3 is complete and accurate and illustrates all Persons who have a direct or indirect ownership interest in Original Borrower.

4.19 Purchase Options. Except for purchase agreements for the sale of tenant in common interests in the Property which do not violate the terms of the Loan Documents, neither the Property nor any part thereof is subject to any purchase options or other similar rights in favor of third parties.

4.20 Management Agreement. The Management Agreement is in full force and effect. There is no default, breach or violation existing thereunder, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation thereunder, by either party thereto. Pursuant to the Management Agreement, Borrowers have appointed the Manager as their agent for (i) hiring, terminating (subject to the provisions thereof), overseeing and otherwise dealing with any sub-property manager for the Property, (ii) otherwise overseeing the day to day operation and management of the Property, and (iii) subject to those material decisions reserved to the tenants in common under the Management Agreement, making decisions and otherwise interacting and dealing with Lender with respect to the Loan, this Agreement, the other Loan Documents and the Property. Additionally, the Manager has control of all operating and other bank accounts with respect to the Property.

4.21 Hazardous Substances. To Borrower's actual knowledge, based solely upon the environmental report delivered to Lender in connection herewith, (i) the Property is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (collectively, "***Environmental Laws***"); (ii) the Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic and/or dangerous substances, toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property ("***Toxic Mold***") or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "***Hazardous Substances***"); (iii) no Hazardous Substances are or have been (including the period prior to such Borrower's acquisition of the Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws; (iv) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Property; (v) no Toxic Mold is on or about the Property which requires remediation; and (vi) no underground storage tanks exist on the Property and the Property has never been used as a landfill. There have been no environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of any Borrower which have not been provided to Lender.

4.22 Name. No Borrower uses or will use any trade name or has done or will not do business under any name other than its actual name set forth herein. The principal place of business of Borrower is its primary address for notices as set forth in Section 6.1, and Borrower has no other place of business.

4.23 Other Debt. There is no indebtedness with respect to the Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than Permitted Encumbrances and Permitted Indebtedness.

4.24 Tenant in Common Agreement.

(a) The Tenancy-in-Common Agreement dated substantially concurrently herewith executed by the parties constituting Borrower (the "***Tenant in Common Agreement***") is in full force and effect and has not been modified or amended.

(b) There are no defaults under the Tenant in Common Agreement, and to Borrower's actual knowledge, no event has occurred, which with the passage of time, the giving of notice, or both, would constitute a default under the Tenant in Common Agreement.

(c) The Tenant in Common Agreement provides that, so long as the Loan or any portion thereof is outstanding, each tenant in common agrees that it will not seek or be entitled to seek and obtain a partition of all or any part of the Property without first obtaining the prior written consent of Lender, and each tenant in common expressly waives any right it may have to partition the Property or any part thereof, unless Lender has consented in writing to such party's exercise of such rights.

(d) The Tenant in Common Agreement provides that each tenant in common agrees that the Tenant in Common Agreement, and all rights and privileges and remedies of each tenant in common thereunder, including without limitation, any rights of indemnification, first refusal, purchase options or other similar rights under the Tenant in Common Agreement, are subject and subordinate to the Instrument and the other Loan Documents and the Liens created thereby, and to all rights of the Lender thereunder.

(e) The Tenant in Common Agreement provides that no party thereunder may exercise any remedy provided for therein (including any rights of indemnification) against any other party for as long as the Loan (or any portion thereof) is outstanding.

(f) The Tenant in Common Agreement provides that each tenant in common waives, for so long as the Loan (or any portion thereof) is outstanding, any lien rights, whether statutory or otherwise, that it may have against the co-tenancy interest of any other tenant in common.

(g) The Tenant in Common Agreement provides that for so long as the Loan (or any portion thereof) is outstanding, Lender shall be a third party beneficiary of the Tenant in Common Agreement.

(h) The Tenant in Common Agreement provides that Borrower shall not, without the prior consent of Lender, terminate or cancel the Tenant in Common Agreement or modify, change, supplement, alter or amend the Tenant in Common Agreement in any manner whatsoever and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Tenant in Common Agreement without the prior consent of Lender shall be void and of no force and effect.

(i) To the best of Borrower's knowledge, no securities laws have been violated in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no tenant in common or any of its affiliates has made any material untrue statement in any offering memorandum or other offering materials provided

to prospective investors in connection with any potential investment in any such tenancy in common interest or has omitted any material fact or information from any such materials. Each tenant in common shall and shall cause all of its affiliates to comply with any and all securities laws in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no tenant in common or any of its affiliates shall include any material untrue statement in any offering memorandum or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or shall omit any material fact or information from any such materials.

4.25 Securities Laws Compliance. To Original Borrowers' knowledge, no Securities Laws have been violated in connection with the issuing, selling, transferring or marketing of tenancy in common interests, and no material untrue statement has been made in any investment summary or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or has omitted any material fact or information from any such materials. Original Borrower shall and shall cause all of its Affiliates to comply with any and all securities laws in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no material untrue statement shall be made in any investment summary or other materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest nor shall any material fact or information be omitted from any such materials.

All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender (although they shall be deemed made on the date actually given) and (ii) shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.21 shall survive in perpetuity. Notwithstanding anything to the contrary contained herein, it is understood and agreed that any representation made by Borrowers relating to a Borrower shall be deemed made only by such Borrower with respect to itself and not by any other Borrower and upon the assumption of this Loan Agreement by any additional Borrower, then by such Borrower with respect to itself. All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents are effective as of the date given, and shall not be deemed re-given absent separate written agreement to that effect by any Borrower.

5. COVENANTS

Until the end of the Term, Borrowers hereby covenant and agree with Lender that:

5.1 Existence. Each Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all Licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.2 Taxes and Other Charges. Borrowers shall pay all Taxes and Other Charges as the same become due and payable, and deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid no later than 30 days before they would be delinquent if not paid (provided, however, that Borrowers need not pay such Taxes nor furnish such receipts for payment of Taxes paid by Lender pursuant to Section 3.3). Borrowers shall not suffer and shall promptly cause to be paid and discharged any Lien against the Property, and shall promptly pay (or cause to be paid)for all utility services provided to the Property. After prior notice to Lender, Borrowers, at their own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and is continuing, (ii) such proceeding shall suspend the collection of the Taxes or such Other Charges, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which any Borrower is subject and shall not constitute a default thereunder, (iv) no part of or interest in the Property will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrowers shall have furnished such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, which shall not be less than 125% of the Taxes and Other Charges being contested, and (vi) Borrowers shall promptly upon final determination thereof pay the amount of such Taxes or Other Charges, together with all costs, interest and penalties. Lender may pay over any such security or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

5.3 Access to Property. Borrowers shall permit agents, representatives, consultants and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.4 Repairs; Maintenance and Compliance; Alterations.

5.4.1 Repairs; Maintenance and Compliance. Borrowers, in a commercially reasonable manner, shall at all times maintain, preserve and protect all franchises and trade names, and shall cause the Property to be maintained in a commercially reasonable condition and repair and shall not remove, demolish or alter the Improvements or Equipment (except for (i) alterations performed in accordance with Section 5.4.2, (ii) alterations in connection with tenant improvements accomplished pursuant to any Lease and (iii) normal replacement of Equipment with Equipment of equivalent value and functionality). Borrowers shall promptly comply with all Legal Requirements and immediately cure properly any violation of a Legal Requirement. Borrowers shall use reasonable efforts to notify Lender in writing during a commercially reasonable time period after any Borrower first receives notice of any such non-compliance. Borrowers shall repair, replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

5.4.2 Alterations. Borrowers may, without Lender's consent, perform alterations to the Improvements and Equipment which (i) do not constitute a Material Alteration, (ii) do not adversely affect any Borrower's financial condition or the value or Net Operating

Income of the Property and (iii) are in the ordinary course of Borrowers' business. No Borrower shall perform any Material Alteration without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Lender may, in its sole and absolute discretion, withhold consent to any alteration the cost of which is reasonably estimated to exceed $1,000,000 or which is likely to result in a decrease of Net Operating Income by 2.5% or more for a period of 30 days or longer. Lender may, as a condition to giving its consent to a Material Alteration, require that Borrowers deliver to Lender security for payment of the cost of such Material Alteration in an amount equal to 125% of the cost of the Material Alteration as estimated by Lender. Upon substantial completion of the Material Alteration, Borrowers shall provide evidence satisfactory to Lender that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements and substantially in accordance with plans and specifications approved by Lender (which approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of lien and (iii) all material Licenses necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Borrowers shall reimburse Lender upon demand for all out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Lender) incurred by Lender in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section 5.4.2.

5.5 **Performance of Other Agreements**. Borrowers shall observe and perform each and every term to be observed or performed by one or more Borrowers pursuant to the terms of any agreement or instrument affecting or pertaining to the Property, including the Loan Documents and the Property Agreements.

5.6 **Cooperate in Legal Proceedings**. Borrowers shall provide Lender reasonable notice of any proceedings before any Governmental Authority which may in any material way affect the rights of Lender under any Loan Document.

5.7 **Further Assurances**. Borrowers shall, at Borrowers' sole cost and expense, (i) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Debt and/or for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Lender may reasonably require from time to time; and (ii) upon Lender's request therefor given from time to time after the occurrence of any Default or Event of Default pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to any Borrower and (a) searches of title to the Property, each such search to be conducted by search firms reasonably designated by Lender in each of the locations reasonably designated by Lender, provided, however, Borrower shall have no obligation to do any of the foregoing if it creates an unreasonable burden or creates liability beyond that originally contemplated by the Loan Documents.

5.8 Environmental Matters.

5.8.1 Hazardous Substances. So long as one or more Borrowers owns or is in possession of the Property, each such Borrower shall (i) keep the Property free from Hazardous Substances and in compliance with all Environmental Laws, (ii) promptly notify Lender if such Borrower shall gain actual knowledge that (A) any Hazardous Substance is on or near the Property, (B) the Property is in violation of any Environmental Laws or (C) any condition on or near the Property shall pose a threat to the health, safety or welfare of humans and (iii) remove from the Property such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law. Nothing herein shall prevent such Borrower from recovering such expenses from any other party that may be liable for such removal or cure.

5.8.2 Environmental Monitoring.

(a) Upon obtaining actual knowledge thereof, Borrowers shall give prompt written notice to Lender of (i) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Substance on, under, from or about the Property, (ii) all claims made or threatened by any third party (including any Governmental Authority) against any Borrower or the Property or any party occupying the Property relating to any loss or injury resulting from any Hazardous Substance. Upon becoming aware of the presence of mold or fungus at the Property, that violates applicable Environmental Laws, Borrowers shall (i) undertake an investigation to identify the source(s) of such mold or fungus and shall develop and implement an appropriate remediation plan to eliminate the presence of any Toxic Mold, (ii) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold (including taking any action necessary to clean and disinfect any portions of the Property affected by Toxic Mold, including providing any necessary moisture control systems at the Property), and (iii) provide evidence reasonably satisfactory to Lender of the foregoing. Borrowers shall give Lender prior notice of any legal or administrative proceedings or other actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Borrowers shall pay all reasonable attorneys' fees and disbursements incurred by Lender in connection therewith.

(b) Upon Lender's request, after Borrower or Lender shall have received knowledge of a pending or threatened legal or administrative proceeding or claim regarding Hazardous Substances or violation of Environmental Laws, Borrowers shall pay for the reasonable cost of an inspection or audit of the Property prepared by Lender's Consultant assessing the presence or absence of Hazardous Substances on, in or near the Property, . Such inspections and audit may include soil bearings and ground water monitoring. If Borrowers fail to provide any such inspection or audit within 30 days after such request, Lender may order same, and Borrowers hereby grant to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit. Lender shall use all reasonable efforts not to violate the terms and provision of any Leases in connection with any of the foregoing.

(c) If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Substance, whether such Hazardous Substance existed prior to the ownership of the Property by any Borrower, or presently exists or is reasonably suspected of existing,

Borrowers shall cause such operations and maintenance plan to be prepared and implemented at their expense upon request of Lender, and with respect to any Toxic Mold, Borrowers shall take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the Property. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind is required under an applicable Environmental Law ("***Remedial Work***"), Borrowers shall commence all such Remedial Work within 30 days after written demand by Lender and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required under applicable law). All Remedial Work shall be performed by licensed contractors approved in advance by Lender and under the supervision of a consulting engineer approved by Lender. All costs of such Remedial Work shall be paid by Borrowers, including Lender's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Borrowers do not timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall not be obligated to) cause such Remedial Work to be performed at Borrowers' expense. Notwithstanding the foregoing, Borrowers shall not be required to commence such Remedial Work within the above specified time period: (x) if prevented from doing so by any Governmental Authority, (y) if commencing such Remedial Work within such time period would result in any Borrower or such Remedial Work violating any Environmental Law, or (z) if Borrowers, at their expense and after prior written notice to Lender, are contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Borrowers shall have the right to contest the need to perform such Remedial Work, provided that, (1) Borrowers are permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither the Property nor any part thereof or interest therein will be sold, forfeited or lost if a Borrower fails to promptly perform the Remedial Work being contested, and if such Borrower fails to prevail in such contest Borrower would thereafter have the opportunity to perform such Remedial Work, (3) Lender would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Borrowers have not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither the Property nor any interest therein would be subject to the imposition of any Lien for which Borrowers have not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work and (4) Borrowers shall have furnished to Lender additional security in respect of the Remedial Work being contested and the loss or damage that may result from Borrowers' failure to prevail in such contest in such amount as may be reasonably requested by Lender but in no event less than one hundred twenty-five percent (125%) of the cost of such Remedial Work as estimated by Lender or Lender's Consultant and any loss or damage that may result from Borrowers' failure to prevail in such contest.

(d) No Borrower shall install or permit to be installed on the Property any underground storage tank without Lender's prior, express written consent.

5.8.3 <u>O & M Program</u>. In the event any environmental report delivered to Lender in connection with the Loan recommends the development of or continued compliance with an operation and maintenance program for the Property (including, without limitation, with respect to the presence of asbestos and/or lead-based paint) ("***O & M Program***"), Borrower shall develop (or continue to comply with, as the case may be) such O & M Program and shall, during

the term of the Loan, including any extension or renewal thereof, comply in all material respects with the terms and conditions of the O & M Program.

5.9 Title to the Property. Borrowers will warrant and defend the title to the Property as insured in Borrower's name, and the validity and priority of all Liens granted or otherwise given to Lender under the Loan Documents, subject only to Permitted Encumbrances, against the claims of all Persons.

5.10 Leases.

5.10.1 Generally. Upon request, Borrowers shall furnish Lender with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party tenants.

5.10.2 Material Leases. No Borrower shall enter into a proposed Material Lease or a proposed renewal, extension or modification of an existing Material Lease without the prior written consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed. Prior to seeking Lender's consent to any Material Lease, Borrowers shall deliver to Lender a copy of such proposed lease (a "***Proposed Material Lease***") blacklined to show changes from the standard form of Lease approved by Lender and then being used by Borrowers. Lender shall approve or disapprove each Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease for which Lender's approval is required under this Agreement within 10 Business Days of the submission by Borrowers to Lender of a written request for such approval, accompanied by a final copy of the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. If requested by Borrowers, Lender will grant conditional approvals of Proposed Material Leases or proposed renewals, extensions or modifications of existing Material Leases at any stage of the leasing process, from initial "term sheet" through negotiated lease drafts, provided that Lender shall retain the right to disapprove any such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease, if subsequent to any preliminary approval material changes are made to the terms previously approved by Lender, or additional material terms are added that had not previously been considered and approved by Lender in connection with such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. Provided that no Event of Default is continuing, if Borrowers provide Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.2 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrowers within 10 Business Days after receipt by Lender of the request, the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease shall be deemed approved by Lender, and Borrowers shall be entitled to enter into such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. Notwithstanding anything to the contrary in this Section 5.10.2, unless expressly agreed to in writing by Lender, any approval or deemed approval by Lender of a Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease pursuant to this Section 5.10.2 shall not be deemed to constitute an

approval or deemed approval by Lender of any Approved Leasing Expenses payable in connection therewith.

5.10.3 Minor Leases. Notwithstanding the provisions of Section 5.10.2 above, provided that no Event of Default is continuing, renewals, amendments and modifications of existing Leases and proposed leases shall not be subject to the prior approval of Lender provided (i) the proposed lease would be a Minor Lease or the existing Lease as amended or modified or the renewal Lease is a Minor Lease, (ii) the proposed lease shall be written substantially in accordance with the standard form of Lease which shall have been approved by Lender, (iii) the Lease as amended or modified or the renewal Lease or series of leases or proposed lease or series of leases: (a) shall provide for net effective rental rates comparable to existing local market rates, (b) shall have an initial term (together with all renewal options) of not less than three years or greater than ten years, (c) shall provide for automatic self-operative subordination to the Mortgage and, at Lender's option, (x) attornment to Lender and (y) the unilateral right by Lender, at the option of Lender, to subordinate the Lien of the Mortgage to the Lease, and (d) shall not contain any option to purchase, or any right of first refusal to purchase. Borrowers shall deliver to Lender copies of all Leases which are entered into pursuant to the preceding sentence together with Borrowers' certification that it has satisfied all of the conditions of the preceding sentence within ten days after the execution of the Lease. With respect to any Lease or proposed renewal, extension or modification of an existing Lease that requires Lender's consent under this Section 5.10.3, provided that no Event of Default is continuing, if Borrower provides Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.3 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrower within 10 Business Days after receipt by Lender of the request, the proposed Lease or proposed renewal, extension or modification of an existing Lease shall be deemed approved by Lender, and Borrower shall be entitled to enter into such proposed Lease or proposed renewal, extension or modification of an existing Lease; provided, however that, unless expressly agreed to in writing by Lender, any such approval of deemed approval shall not be deemed to constitute an approval or deemed approval by Lender of any Approved Leasing Expenses payable in connection therewith.

5.10.4 Additional Covenants with respect to Leases. Each Borrower (i) shall observe and perform the material obligations imposed upon the lessor under the Leases and shall not do or permit 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 that such Borrower shall send or receive under any Lease; (iii) shall enforce, in accordance with commercially reasonable practices for properties similar to the Property, the terms, covenants and conditions in the Leases to be observed or performed by the lessees, short of termination thereof; (iv) shall not collect any of the Rents more than one month in advance (other than security deposits or similar deposits or reserves); (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (vi) shall not modify any Lease in a manner inconsistent with the Loan Documents; (vii) shall not convey or transfer or suffer or permit a conveyance or transfer of the Property so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees under Leases; (viii) shall not consent to any assignment of or subletting under any Material Lease unless required in accordance with its terms without the prior consent of Lender, which, with respect to a

subletting, may not, so long as no Event of Default is continuing, be unreasonably withheld or delayed; and (ix) shall not cancel or terminate any Lease or accept a surrender thereof (except in the exercise of Borrowers' commercially reasonable judgment in connection with a tenant default under a Minor Lease) without the prior consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed.

5.11 [Intentionally deleted].

5.12 Property Management.

5.12.1 Management Agreement.

(a) Borrowers shall (i) cause the Property to be managed pursuant to the Management Agreement; (ii) promptly perform and observe all of the covenants required to be performed and observed by them under the Management Agreement and do all things necessary to preserve and to keep unimpaired their rights thereunder; (iii) promptly notify Lender of any default under the Management Agreement of which they are aware; (iv) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditure plan, and property improvement plan, any notice of default and, to the extent reasonably requested by Lender, any other notice, report and estimate received by any Borrower under the Management Agreement; and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement. Except as to those matters expressly reserved to the tenant in common owners, the Manager shall be granted in the Management Agreement sole and exclusive authority with respect to the day-to-day operation of the Property (including control of all accounts with respect to the Property).

(b) Without Lender's prior written consent, no Borrower shall (i) surrender, terminate, fail to renew, cancel, extend or renew the Management Agreement or otherwise replace the Manager or enter into any other management agreement (except pursuant to Section 5.12.2 or Section 5.12.3); (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release any of its rights and remedies under, the Management Agreement; (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement); or (vi) suffer or permit the ownership, management or Control of Manager to be transferred to a Person other than an Affiliate of U.S. Advisors except as permitted herein. Lender shall be a third-party beneficiary of the Management Agreement, and at all times the Management Agreement shall be subordinated to the Mortgage pursuant to an agreement in form and substance acceptable to Lender.

5.12.2 Termination of Manager. If (i) an Event of Default shall be continuing, or (ii) Manager is in default under the Management Agreement, or (iii) upon the gross negligence, malfeasance or willful misconduct of the Manager, Borrowers shall, at the request of Lender, terminate the Management Agreement and replace Manager with a replacement manager acceptable to Lender in Lender's discretion and the applicable Rating Agencies on terms and

conditions satisfactory to Lender and the applicable Rating Agencies. Borrowers' failure to appoint an acceptable manager within thirty (30) days after Lender's request of Borrowers to terminate the Management Agreement shall constitute an immediate Event of Default. Borrower may from time to time appoint a successor manager to manage the Properties, which successor manager and Management Agreement shall be approved in writing by Lender in Lender's discretion and the applicable Rating Agencies.

5.12.3 Successor Manager. Borrowers may from time to time elect to terminate the existing Management Agreement in accordance with the Tenant in Common Agreement and appoint a successor manager to manage the Property. Any successor manager and Management Agreement shall be approved, prior to the effective date of termination of the outgoing manager, in writing by Lender in Lender's discretion and the applicable Rating Agencies (and Lender's approval may be conditioned upon Borrower delivering a Rating Comfort Letter as to such successor manager and Management Agreement). In no event shall the existing Management Agreement terminate before a new Management Agreement is effective and such successor manager is in management of the Property. Borrowers' failure to approve a successor manager in accordance with the Tenant in Common Agreement and to engage such successor manager within thirty (30) days after Borrowers elect to terminate any existing Management Agreement shall constitute an immediate Event of Default.

5.12.4 Consent and Subordination of Manager. If at any time Lender consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Lender's consent, execute a consent and subordination of management agreement substantially in the form of the Consent and Subordination of Manager of even date herewith executed and delivered by Manager to Lender.

5.13 Special Purpose Bankruptcy Remote Entity. Original Borrower shall at all times be a Special Purpose Bankruptcy Remote Entity. Original Borrower shall not directly or indirectly make any change, amendment or modification to its organizational documents, or otherwise take any action which could result in Original Borrower not being a Special Purpose Bankruptcy Remote Entity. A "**Special Purpose Bankruptcy Remote Entity**" shall have the meaning set forth on Schedule 4 hereto.

5.14 [Intentionally deleted].

5.15 Change In Business or Operation of Property. Borrowers shall not purchase or own any real property other than the Property and shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of their business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business or otherwise cease to operate the Property as a commercial business park, or terminate such business for any reason whatsoever (other than temporary cessation in connection with renovations to the Property).

5.16 Debt Cancellation. No Borrower shall cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to such Borrower by any Person, except for adequate consideration and in the ordinary course of such Borrower's business.

5.17 Affiliate Transactions. No Borrower shall enter into, or be a party to, any transaction with an Affiliate of any Borrower or any of the members of any Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to such Borrower or such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

5.18 Zoning. No Borrower shall initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.19 No Joint Assessment. No Borrower shall suffer, permit or initiate the joint assessment of the Property (i) with any other real property constituting a tax lot separate from the Property, and (ii) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.20 Principal Place of Business. No Borrower shall change its principal place of business or chief executive office without first giving Lender 30 days' prior notice.

5.21 Change of Name, Identity or Structure. No Borrower shall change its name, identity (including its trade name or names) or such Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in such Borrower's structure, without first obtaining the prior written consent of Lender. Each Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, each Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which such Borrower intends to operate the Property, and representing and warranting that such Borrower does business under no other trade name with respect to the Property.

5.22 Indebtedness. Borrowers shall not directly or indirectly create, incur or assume any indebtedness other than (i) the Debt and (ii) unsecured trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property, which in the case of such unsecured trade payables (A) are not evidenced by a note, (B) do not exceed, at any time, a maximum aggregate amount of 1% of the original amount of the Principal and (C) are paid within thirty (30) days of the date incurred (collectively, "***Permitted Indebtedness***").

5.23 Licenses. Except in connection with any Permitted Transfer, no Borrower shall Transfer any License required for the operation of the Property.

5.24 Compliance with Restrictive Covenants, Etc. No Borrower will enter into, modify, waive in any material respect or release any Easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing, without Lender's prior written consent, which consent may be granted or denied in Lender's sole discretion.

5.25 ERISA.

(i) No Borrower shall engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(ii) No Borrower shall maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of such Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan or any Welfare Plan or permit the assets of such Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

(iii) Each Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the Term, as requested by Lender in its sole discretion, that (A) such Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (B) such Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) the assets of such Borrower do not constitute "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101.

5.26 Transfers.

5.26.1 Generally. No Borrower shall directly or indirectly make, suffer or permit the occurrence of any Transfer other than a Permitted Transfer.

5.26.2 Permitted TIC Transfers.

(a) [Intentionally deleted].

(b) TIC Transfers. Subject to obtaining Lender's prior written consent and subject to the satisfaction of all of the conditions precedent set forth below, Original Borrower may, from time to time, transfer portions of its tenant-in-common interest in the Property to one or more entities (the "*TIC Borrowers*" collectively, and each a "*TIC Borrower*") that will assume, on a joint and several basis, Original Borrower's obligations under the Loan Documents (a "*TIC Transfer*"). Original Borrower may make a written application to Lender for Lender's consent to the subject TIC Transfer, subject to the conditions set forth below. Together with each such written application, Borrowers will pay to Lender a non-refundable processing fee of $1,500. Borrowers also shall pay on demand all of the reasonable out-of-pocket costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, in connection with any proposed TIC Transfer, whether or not the same occurs. Each TIC Transfer shall be subject to the satisfaction of the following conditions:

(i) No Event of Default has occurred and is continuing.

(ii) The identity and financial condition of each TIC Borrower and the owner(s) of the beneficial interests in such TIC Borrower (each, a "*TIC Owner*") shall be

satisfactory to Lender in its sole and absolute discretion. In connection with the foregoing, with respect to any proposed TIC Borrower and TIC Owner, (i) Lender shall have received true and correct copies of credit reports, Lexis/Nexis background searches, and, with respect to TIC Borrowers and TIC Owners acquiring twenty percent (20%) or more of Original Borrower's interest, financial statements and federal income tax returns for the two years preceding the Permitted TIC Transfer in question; and any other information reasonably requested by Lender concerning the proposed TIC Borrower and/or its TIC Owner(s) and (ii) the subject TIC Owner shall (1) be solvent, (2) have never been convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no outstanding judgments against him/her which could have a material adverse effect on the applicable TIC Borrower to pay or perform any obligation under any Loan Document or to provide any security as required by the Loan Documents and (5) shall be an "Accredited Investor" as defined in Regulation D, as promulgated under the Securities Act of 1933. Lender's consent to a proposed Additional TIC Transfer shall be granted or denied in its sole and absolute discretion within ten (10) Business Days following receipt of the items described above.

(iii) Each TIC Borrower shall be a Special Purpose Bankruptcy Remote Entity in compliance with Schedule 4 hereof.

(iv) The TIC Owner(s) of each TIC Borrower shall execute and deliver to Lender a Guaranty of Recourse Obligations in the form attached hereto as Schedule 5 and Guarantors shall deliver or cause to be delivered to Lender reaffirmation of their obligations under the Guaranty of Recourse Obligations.

(v) The Property shall not at any time be owned by more than thirty-five (35) Borrowers; provided however for the purposes of determining the number of TIC Borrowers, Lender shall treat as a single TIC Borrower each of any ten (10) TIC Borrowers that consist of two entities each of which are separately wholly owned and controlled, directly or indirectly, by a husband and wife (i.e., one controlled by the husband and the other controlled by the wife), which entities take title in the Property by one deed, and (C) which entities enter into one assignment and assumption agreement as required herein.

(vi) [Intentionally deleted.]

(vii) Original Borrower shall at all times own not less than a one percent tenant-in-common interest in the Property.

(viii) The applicable TIC Borrower shall execute and deliver to Lender a Loan Assumption Agreement in the form attached hereto as Schedule 6, pursuant to which, among other things, such TIC Borrower shall assume all of Borrowers' liabilities and obligations under the Loan Documents so that each existing Borrower and each TIC Borrower shall be jointly and severally liable for all of the liabilities and obligations under the Loan Documents, and upon the execution and delivery of such assignment and assumption agreement such TIC Borrower shall be a "Borrower" for all purposes under the Loan Documents.

(ix) Original Borrower shall have entered into each of the Property Agreements, the applicable TIC Borrower shall execute and deliver the Tenant in Common Agreement and an assumption of the other Property Agreements and the Fund Manager shall be designated by Borrowers as the sole notice party under this Agreement.

(x) The applicable TIC Borrower and each existing Borrower shall execute and deliver to Lender any other documents or deliverable required by Lender related to the Permitted TIC Transfer, including UCC-1 financing statements, copies of organizational documents for the proposed TIC Borrower and its members and title insurance endorsements, in form and substance acceptable to Lender in Lender's sole discretion (together with the documents required pursuant to clauses (iv), (viii) and (ix) above, the "***TIC Transfer Documents***").

(xi) Each TIC Borrower shall deliver to Lender an opinion of counsel in form and substance satisfactory to Lender, to the effect that each TIC Borrower is duly formed, validly existing, and in good standing, that the TIC Transfer Documents have been duly authorized, executed and delivered, that the TIC Transfer Documents and the Loan Documents are enforceable in accordance with their terms, and such other matters as Lender may request.

(xii) Each TIC Borrower shall deliver to Lender evidence of compliance with insurance requirements and such other closing requirements customarily imposed by Lender.

(xiii) With respect to any Permitted TIC Transfer, (i) after giving effect to such Permitted TIC Transfer, Key Principals shall continue to Control (as defined in clause (ii) of the defined term "Control" in Section 1.1) the day-to-day management and operations of the Property, and (ii) no such Permitted TIC Transfer shall result in a change of the day-to-day management and operations of the Property.

(c) Substitution of TIC Borrowers. Subject to obtaining Lender's prior written consent, and subject to the satisfaction of all of the conditions precedent set forth below, any TIC Borrower may transfer its tenant-in-common interest in the Property to another entity (the "***Substitute TIC Borrower***") that will assume, on a joint and several basis, Borrowers' obligations under the Loan Documents (a "***TIC Transfer and Assumption***"). Borrowers may make a written application to Lender for Lender's consent to a TIC Transfer and Assumption, subject to the conditions set forth below. Together with each such written application, Borrowers will pay to Lender a non-refundable $1,500 processing fee. Borrowers also shall pay on demand all of the reasonable out-of-pocket costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, in connection with any proposed TIC Transfer and Assumption, whether or not the same occurs. Lender's consent to a TIC Transfer and Assumption, which shall be granted or denied within ten (10) Business Days following receipt of the items described in clause (2) of subsection (b) above, shall be subject to the satisfaction of the following conditions:

(i) [Intentionally deleted.]

(ii) The conditions set forth in subsection (b) above shall have been satisfied;

(iii) With respect to any TIC Transfer and Assumption after the first ten (10) TIC Transfer and Assumptions, Borrowers shall deliver to Lender an assumption fee in the amount of 1.00% of the Substitute TIC Borrower's pro-rata share of the then unpaid Principal (i.e., an amount equal to 1.00% of the product of (1) the then unpaid Principal and (2) the applicable Substitute TIC Borrower's undivided tenant in common interest (after giving effect to the subject TIC Transfer and Assumption) in the Property (expressed as a percentage));

5.26.3 Transfer and Assumption.

(a) Subject to obtaining Lender's prior written consent, which may be withheld in Lender's reasonable discretion, and subject to the terms and satisfaction of all of the conditions precedent set forth in this Section 5.26.3, Borrowers shall have the right to Transfer the Property to one or more parties (the "*Transferee Borrower*") and have the Transferee Borrower assume all of Borrowers' obligations under the Loan Documents, and have replacement guarantors and indemnitors assume all of the obligations of the indemnitors and guarantors of the Loan Documents (collectively, a "*Transfer and Assumption*"). Borrowers may make a written application to Lender for Lender's consent to the Transfer and Assumption, subject to the conditions set forth in paragraphs (b) and (c) of this Section 5.26.3. Together with such written application, Borrowers will pay to Lender the reasonable review fee then required by Lender. Borrowers also shall pay on demand all of the reasonable costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, and including the fees and expenses of Rating Agencies and other outside entities, in connection with considering any proposed Transfer and Assumption, whether or not the same is permitted or occurs.

(b) Lender's consent, which may be withheld in Lender's sole and absolute discretion, to a Transfer and Assumption shall be subject to the following conditions:

(i) No Default or Event of Default has occurred and is continuing;

(ii) Borrowers have submitted to Lender true, correct and complete copies of any and all information and documents of any kind requested by Lender concerning the Property, Transferee Borrower, replacement guarantors and indemnitors and Borrowers;

(iii) Evidence satisfactory to Lender has been provided showing that the Transferee Borrower and such of its Affiliates as shall be designated by Lender comply and will comply with Section 5.13 hereof, as those provisions may be modified by Lender taking into account the ownership structure of Transferee Borrower and its Affiliates;

(iv) [Intentionally deleted.];

(v) If the Loan has not been the subject of a Secondary Market Transaction, then Lender shall have determined in its reasonable discretion (taking into consideration such factors as Lender may determine, including the attributes of the loan pool in which the Loan might reasonably be expected to be securitized) that no rating for any securities

that would be issued in connection with such securitization will be diminished, qualified, or withheld by reason of the Transfer and Assumption;

(vi) Borrowers shall have paid all of Lender's reasonable costs and expenses in connection with considering the Transfer and Assumption, and shall have paid the amount requested by Lender as a deposit against Lender's costs and expenses in connection with effecting the Transfer and Assumption;

(vii) Borrowers, the Transferee Borrower, and the replacement guarantors and indemnitors shall have indicated in writing in form and substance reasonably satisfactory to Lender their readiness and ability to satisfy the conditions set forth in subsection (c) below;

(viii) The identity, experience, financial condition and creditworthiness of the Transferee Borrower and the replacement guarantors and indemnitors shall be satisfactory to Lender; and

(ix) The proposed property manager and proposed Management Agreement shall be satisfactory to Lender and the applicable Rating Agencies.

(c) If Lender consents to the Transfer and Assumption, the Transferee Borrower and/or Borrower as the case may be, shall immediately deliver the following to Lender:

(i) Borrowers shall deliver to Lender an assumption fee in the amount of 1.00 percent of the then unpaid Principal;

(ii) Borrowers, Transferee Borrower and the original and replacement guarantors and indemnitors shall execute and deliver to Lender any and all documents effecting the Transfer and Assumption required by Lender, in form and substance required by Lender, in Lender's sole discretion;

(iii) Counsel to the Transferee Borrower and replacement guarantors and indemnitors shall deliver to Lender opinions in form and substance satisfactory to Lender as to such matters as Lender shall require, which shall address substantially the same matters as were required in connection with the origination of the Loan;

(iv) Borrowers shall cause to be delivered to Lender, an endorsement (relating to the change in the identity of the vestee and execution and delivery of the Transfer and Assumption documents) to the Title Insurance Policies in form and substance acceptable to Lender, in Lender's reasonable discretion (the "***Endorsement***"); and

(v) Borrowers shall deliver to Lender a payment in the amount of all remaining unpaid out-of-pocket costs incurred by Lender in connection with the Transfer and Assumption, including but not limited to, Lender's reasonable attorneys fees and expenses, all recording fees, and all fees payable to the title company for the delivery to Lender of the Endorsement.

(vi) If an Approved Mezzanine Loan is outstanding at the time of the Transfer and Assumption, the proposed Transfer and Assumption shall not constitute or cause a default under the Mezzanine Loan Documents.

(d) Upon the closing of a Transfer and Assumption, Lender shall release the then-existing Borrowers and Guarantors from all obligations under the Loan Documents (except as to Borrowers' Recourse Liabilities and Guarantor's liability therefor), only if expressly assumed by the Transferee Borrower or replacement guarantor, as the case may be, in connection with the Transfer and Assumption).

(e) The rights of Borrowers under this Section 5.26.3 are in addition to and in no way shall limit or be limited by the occurrence of one or more Permitted TIC Transfers permitted pursuant to Section 5.26.2 above.

5.27 Liens. Without Lender's prior written consent, no Borrower shall create, incur, assume, permit or suffer to exist any Lien on all or any portion of the Property or any direct or indirect legal or beneficial ownership interest in any Borrower, except Liens in favor of Lender and Permitted Encumbrances, unless such Lien is bonded or discharged within 30 days after any Borrower first receives notice of such Lien.

5.28 Dissolution. No Borrower shall (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Property or (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of such Borrower except to the extent expressly permitted by the Loan Documents.

5.29 Expenses. Borrowers shall reimburse Lender upon receipt of notice for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with the Loan, including (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrowers; (ii) Borrowers' and Lender's ongoing performance under and compliance with the Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Lender's Liens in the Property and the Cash Accounts (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Lender's Consultant, surveys and engineering reports); (vii) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting one or more Borrowers, the Loan Documents, the Property, or any other security given for the Loan; (viii) fees charged by Rating Agencies in connection with the Loan (other than the initial rating) or any modification thereof and (ix) enforcing any obligations of or collecting any payments due from Borrowers under any Loan Document or with respect to the Property or in

connection with any refinancing or restructuring of the Loan in the nature of a "work-out", or any insolvency or bankruptcy proceedings. The obligations and liabilities of Borrowers under this Section 5.29 shall survive the Term and the exercise by Lender of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

5.30 Indemnity. Borrowers shall defend, indemnify and hold harmless Lender and each of its Affiliates and their respective successors and assigns, including the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing (including any Servicer) and each other Person, if any, who Controls Lender, its Affiliates or any of the foregoing (each, an "***Indemnified Party***"), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the "***Indemnified Liabilities***") in any manner, relating to or arising out of or by reason of the Loan, including: (i) any breach by any Borrower of its obligations under, or any misrepresentation by any Borrower contained in, any Loan Document; (ii) the use or intended use of the proceeds of the Loan; (iii) any information provided by or on behalf of any Borrower, or contained in any documentation approved by any Borrower; (iv) ownership of the Mortgage, the Property or any interest therein, or receipt of any Rents; (v) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vi) any use, nonuse or condition in, on or about the Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property; (viii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from or affecting the Property; (ix) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (x) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (xi) any violation of the Environmental Laws which is based upon or in any way related to such Hazardous Substance, including the costs and expenses of any Remedial Work; (xii) any failure of the Property to comply with any Legal Requirement; (xiii) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof, or any liability asserted against Lender with respect thereto; and (xiv) the claims of any lessee of any portion of the Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; provided, however, that Borrowers shall not have any obligation to any Indemnified Party hereunder to the extent that it is finally judicially determined that such Indemnified Liabilities arise from the gross negligence, fraud or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this paragraph shall be payable on demand and shall bear interest at the Default Rate from the date loss or damage is sustained by any Indemnified Party until paid. The obligations and liabilities of Borrowers under this Section 5.30 shall survive the Term and the exercise by Lender of any of its rights or

remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

5.31 Tenant in Common Agreement and Other Property Agreements.

(a) Each Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions set forth in the Tenant in Common Agreement on the part of each such Borrower to be performed thereunder, and (ii) promptly deliver to Lender any material notice, any notice of default given or received by any Borrower under the Tenant in Common Agreement and any other notice reasonably requested by Lender.

(b) No Borrower shall, without the prior consent of Lender, terminate or cancel the Tenant in Common Agreement or modify, change, supplement, alter or amend the Tenant in Common Agreement in any manner whatsoever (other than to reflect an assumption of the Tenant in Common Agreement by a TIC Borrower in accordance with Section 5.26.2(b) or 5.26.2(c)), and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Tenant in Common Agreement without the prior consent of Lender shall be void and of no force and effect.

(c) Each Borrower hereby assigns to Lender, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of the Loan Documents all of the rights, privileges and prerogatives of the applicable Borrower under the Property Agreements to which such Borrower is or becomes a party, including any rights of first refusal (including any such rights arising under Section 363(i) of Chapter 11 of the United States Bankruptcy Code), purchase options or other similar rights under the Tenant in Common Agreement. Each Borrower hereby agrees that any rights of first refusal, purchase options or other similar rights under the Tenant in Common Agreement afforded to any Borrower are hereby made expressly subordinate to the Mortgage and the other Loan Documents.

(d) Each Borrower hereby agrees that all rights and remedies of each such Borrower, including rights of indemnification, under the Tenant in Common Agreement are hereby expressly made subject and subordinate to the terms and conditions of the Loan Documents and, so long as the Loan is outstanding, no Borrower shall, without the Lender's consent, exercise any such rights and remedies, including any rights of indemnification, against any other tenant-in-common under the Tenant in Common Agreement.

(e) Each Borrower hereby waives any rights it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any portion of the Debt is outstanding, to create or suffer to exist any Lien on all or any portion of any other tenant-in-common interest held by any other Borrower pursuant to the terms of the Tenant in Common Agreement and, so long as the Loan is outstanding, no Borrower shall place a Lien on all or any portion of any other tenant-in-common interest held by any other Borrower pursuant to the terms of the Tenant in Common Agreement.

(f) Each Borrower hereby waives any right that it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any

portion of the Debt is outstanding, to make any application to or petition any court for a partition of the Property, and, so long any portion of the Debt is outstanding, no Borrower shall make any application to or petition any court for a partition of the Property.

(g) Each tenant in common shall, at the reasonable request of Lender or any Rating Agency, modify the Tenancy In Common Agreement in connection with the securitization of the Loan.

(h) Each tenant in common hereby waives any right that it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any portion of the indebtedness evidenced by the Note is outstanding, to make any application to or petition any court for a partition of the Property, and, so long any portion of the indebtedness evidenced by the Note is outstanding, it shall not make any application to or petition any court for a partition of the Property.

(i) To the extent there are any inconsistencies between the terms of the Loan Documents and the terms of the Tenancy In Common Agreement, the terms of the Loan Documents shall prevail.

(j) During the term of the Loan, each tenant in common agrees that Lender shall be deemed a third-party Lender of those provisions of the Tenancy In Common Agreement that benefit Lender.

(k) Each Borrower shall copy Lender on all material notices relating to the Tenancy In Common Agreement.

5.32 Covenants, Representations and Warranties Regarding Ownership Structure.

(a) Original Borrower shall retain not less than a one percent (1%) tenant in common interest in the Property.

(b) The Original Borrower is and shall remain a Delaware limited liability company which is and shall remain a Single Purpose Bankruptcy Remote Entity.

(c) Fund Manager is and shall remain the sole manager of Original Borrower, and is and shall remain Controlled, directly or indirectly, by U.S. Advisors.

(d) Original Borrower may, without notice or consent of the Lender, at any time admit additional members to Original Borrower through the sale of "unit interests" so long as the requirements herein remain satisfied; including, without limitation, the requirements of subsection (iv) in the definition of "*Permitted Transfers*."

(e) Without limiting the foregoing, Key Principals hold and (except in the event that an Approved Mezzanine Lender acquires the ownership interests of the Mezzanine Borrower in the Borrowers) shall hold direct or indirect Control (as defined in clause (ii) of the defined term "*Control*" in Section 1.1) of Original Borrower, and Manager or any other manager of any such entity with respect to voting rights on all matters relating to the Loan, the Loan

Documents and/or restructurings or amendments or modifications thereof (including in connection with a work-out relating thereto).

5.33 Patriot Act Compliance. Borrowers will use their good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrowers' compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Property, including those relating to money laundering and terrorism. In the event that any Borrower fails to comply with the Patriot Act or any such requirements of governmental authorities, then Lender may, at its option, cause such Borrower to comply therewith and any and all reasonable costs and expenses incurred by Lender in connection therewith shall be secured by the Mortgages and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "***Patriot Act***" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(a) Neither any Borrower nor any partner in any Borrower or member of such partner nor any owner of a direct or indirect interest in any Borrower (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is, to Borrowers' knowledge, currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "***Patriot Act Offense***" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "***Patriot Act Offense***" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "***Government Lists***" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("***OFAC***"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrowers in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in "Governmental Lists."

6. NOTICES AND REPORTING

6.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (a "*Notice*") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Lender:

Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attention: Mortgage Loan Department
Telecopier (203) 618-2052

with a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
515 S. Figueroa Street, 7th Floor
Los Angeles, California 90071
Attention: Gregg J. Loubier
Telecopier: (213) 620-8816

If to Borrower:

Fontaine Business Park, LLC
5 Financial Plaza, Suite 205
Napa, California 94558
Attention: Michael Schwartz and Stephen Corea
Telecopier: (707) 929-1600

With a copy to:

Powell Goldstein LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Attn: Michael Rafter and William H. Mathieu
Telecopier: 404-572-6999

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

6.2 Borrower Notices and Deliveries. Each Borrower shall (a) give prompt written notice to Lender of: (i) any litigation, governmental proceedings or claims or investigations pending or threatened against any such Borrower which might materially adversely affect such Borrower's condition (financial or otherwise) or business or the Property; (ii) any material adverse change in such Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which such Borrower has knowledge; and (b) furnish and provide to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested, from time to time, by Lender. In addition, after request by Lender (but no more frequently than twice in any year), within 45 days after tenant estoppel certificates addressed to Lender, its successors and assigns from each tenant at the Property in form and substance reasonably satisfactory to Lender.

6.3 Financial Reporting.

6.3.1 Bookkeeping. Original Borrower shall keep on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Original Borrower and all items of income and expense and any services, Equipment or furnishings provided in connection with the operation of the Property. Lender shall have the right from time to time during normal business hours upon reasonable notice to examine such books, records and accounts relating to the Property at the office of Manager or other Person maintaining them, and to make such copies or extracts thereof as Lender shall desire. After an Event of Default, Borrowers shall pay any costs incurred by Lender to examine such books, records and accounts, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

6.3.2 Annual Reports. Original Borrower (on behalf of Borrowers) shall furnish to Lender annually, within 120 days after each calendar year, a complete copy of Original Borrower's and the Property's annual financial statements reasonably acceptable to Lender, each in accordance with GAAP and containing balance sheets and statements of profit and loss for such Borrower and the Property in such detail as Lender may request. Each such statement (x) shall be in form and substance reasonably satisfactory to Lender, (y) shall set forth the financial condition and the income and expenses for the Property for the immediately preceding calendar year, including statements of annual Net Operating Income as well as (1) a list of tenants, if any, occupying more than twenty percent of the rentable space of the Property, (2) a breakdown showing (a) the year in which each Lease then in effect expires, (b) the percentage of rentable space covered by such Lease, (c) the percentage of base rent with respect to which Leases shall expire in each such year, expressed both on a per year and a cumulative basis and (z) shall be accompanied by an Officer's Certificate from Original Borrower certifying (1) that such statement is true, correct, complete and accurate and presents fairly the financial condition of the Property and has been prepared in accordance with GAAP and (2) whether there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it. Upon written request from Lender, each TIC Borrower having acquired twenty percent (20%) or more of Original Borrower's interest shall furnish to Lender annually, within 120 days after each calendar year, a complete copy of such TIC Borrower's annual tax return and financial statements. Each such statement shall be in form and substance reasonably satisfactory to Lender and shall be accompanied by an Officer's

Certificate from such TIC Borrower certifying that such statement is true, correct, complete and accurate and presents fairly the net worth and liquidity of such TIC Borrower.

6.3.3 Monthly/Quarterly Reports. Original Borrower (on behalf of Borrowers) shall furnish the following items to Lender within 15 days after the end of (x) each calendar month at any time prior to a Secondary Market Transaction or (y) each calendar quarter thereafter: (i) monthly and year-to-date operating statements, noting Net Operating Income and other information necessary and sufficient under GAAP to fairly represent the financial position and results of operation of the Property during such calendar month, all in form reasonably satisfactory to Lender; (ii) a balance sheet for such calendar month; (iii) a comparison of the budgeted income and expenses and the actual income and expenses for each month and year-to-date for the Property, together with a detailed explanation of any variances of 10% or more between budgeted and actual amounts for such period and year-to-date; (iv) a statement of the actual Capital Expenses made by Borrowers during each calendar quarter as of the last day of such calendar quarter; (v) a statement that Borrowers have not incurred any indebtedness other than indebtedness permitted hereunder; (vi) an aged receivables report and (vii) rent rolls identifying the leased premises, names of all tenants, units leased, monthly rental and all other charges payable under each Lease, date to which paid, term of Lease, date of occupancy, date of expiration, material special provisions, concessions or inducements granted to tenants, and a year-by-year schedule showing by percentage the rentable area of the Improvements and the total base rent attributable to Leases expiring each year) and a delinquency report for the Property. Each such statement shall be accompanied by an Officer's Certificate from Original Borrower (1) that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrowers and the Property in accordance with GAAP (subject to normal year-end adjustments) and (2) whether there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

6.3.4 Other Reports. Subject to the provisions of Section 6.3.2, Original Borrower (on behalf of Borrowers) shall furnish to Lender, within ten Business Days after request, such further detailed and reasonable information with respect to the operation of the Property and the financial affairs of Borrowers or Manager as may be reasonably requested by Lender or any applicable Rating Agency. Upon written request by Lender, each TIC Borrower shall furnish to Lender a statement of such TIC Borrower's net worth and liquidity in such detail as Lender may reasonably request.

6.3.5 Annual Budget. Original Borrower (on behalf of Borrowers) shall prepare and submit (or shall cause Manager to prepare and submit) to Lender (a) on the date hereof, and (b) by November 30th of each year thereafter during the Term, for approval by Lender, which approval shall not be unreasonably withheld or delayed, a proposed pro forma budget for the Property for the succeeding calendar year (the "*Annual Budget*", and each Annual Budget approved by Lender is referred to herein as the "*Approved Annual Budget*")), and, promptly after preparation thereof, any revisions to such Annual Budget. The initial Annual Budget is attached hereto as Schedule 8. The Annual Budget shall consist of (i) an operating expense budget showing, on a month-by-month basis, in reasonable detail, each line item of Borrowers' anticipated operating income and operating expenses (on a cash and accrual basis), including amounts required to establish, maintain and/or increase any monthly payments

required hereunder (and once such Annual Budget has been approved by Lender, such operating expense budget shall be referred to herein as the "***Approved Operating Budget***"), and (ii) a Capital Expense budget showing, on a month-by-month basis, in reasonable detail, each line item of anticipated Capital Expenses (and once such Annual Budget has been approved by Lender, such Capital Expense budget shall be referred to herein as the "***Approved Capital Budget***"). Until such time that any Annual Budget has been approved by Lender, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably determined by Lender (including increases for any non-discretionary expenses)).

6.3.6 Breach. If any Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information (the "***Required Records***") required by this Section 6.3 within 30 days after the date upon which such Required Record is due, and provided Lender has given such Borrower at least 15 days prior notice of such failure, then after such Borrower's failure to deliver any Required Records, Lender shall have the option, upon 15 additional days notice to such Borrower to gain access to such Borrower's books and records and prepare or have prepared at such Borrower's expense, any Required Records not delivered by such Borrower.

7. INSURANCE; CASUALTY; AND CONDEMNATION

7.1 Insurance.

7.1.1 Coverage. Borrowers, at their sole cost, for the mutual benefit of each Borrower and Lender, shall obtain and maintain during the Term the following policies of insurance:

(a) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, vandalism, and malicious mischief, boiler and machinery and, if required by Lender, flood windstorm, environmental and/or earthquake coverage and subject to subsection (j) below, coverage for damage or destruction caused by the acts of "Terrorists" (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure for ordinance of law coverage, costs of demolition and increased cost of construction in amounts satisfactory to Lender. Each such insurance policy shall (i) be in an amount equal to the greatest of (A) 100% of the then replacement cost of the Improvements without deduction for physical depreciation, (B) the unpaid Principal, and (C) such amount as is necessary so that the insurer would not deem Borrower a co-insurer under such policies, (ii) have deductibles no greater than the lesser of $10,000 or five percent (5%) of Net Operating Income per occurrence, (iii) be paid annually in advance and (iv) contain an agreed amount replacement cost endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Borrower is required to insure on a replacement cost basis. If the insurance required under this subparagraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements and such tenant improvements in an amount to be subject to the consent of

Lender, which consent shall not be unreasonably withheld. Lender shall be named Loss Payee on a Standard Mortgagee Endorsement.

(b) Flood insurance if any part of the Property is located in an area now or hereafter designated by the Federal Emergency Management Agency as a Zone "A" & "V" Special Hazard Area, or such other Special Hazard Area if Lender so requires in its sole discretion. Such policy shall (i) be in an amount equal to the greater of (A) 100% of the full replacement cost of the Improvements on the Property (without any deduction for depreciation) or (B) the maximum limit of coverage available and (ii) have a maximum permissible deductible of $3,000.

(c) Public liability insurance, including (i) "Commercial General Liability Insurance", (ii) "Owned", "Hired" and "Non Owned Auto Liability"; and (iii) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than containing minimum limits per occurrence of $2,000,000 and $4,000,000 in the aggregate for any policy year with no deductible or self insured retention; together with at least $25,000,000 excess and/or umbrella liability insurance for any and all claims. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Borrower's obligation to indemnify Lender as required under this Agreement and the other Loan Documents), "Products" and "Completed Operations Liability" coverage.

(d) Rental loss and/or business interruption insurance (i) with Lender being named as "Lender Loss Payee", (ii) in an amount equal to one hundred percent (100%) of the projected Rents from the Property during the period of restoration; and (iii) containing an extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twenty-four (24) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the Term as and when the estimated or actual Rents increase.

(e) Comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to the lease on a replacement cost basis and in an amount equal to the greater of (i) $2,000,000 and (ii) 100% of the full replacement cost of the Improvements on such Property (without any deduction for depreciation).

(f) Worker's compensation and disability insurance with respect to any employees of Borrower, as required by any Legal Requirement.

(g) During any period of repair or restoration, builder's "all-risk" insurance on the so called completed value basis in an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the

Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender.

(h) Coverage to compensate for ordinance of law, the cost of demolition and the increased cost of construction in an amount satisfactory to Lender.

(i) Such other insurance (including environmental liability insurance, earthquake insurance, mine subsidence insurance and windstorm insurance) as may from time to time be reasonably required by Lender in order to protect its interests.

(j) Notwithstanding anything in subsection (a) above to the contrary, Borrowers shall be required to obtain and maintain coverage in their property insurance Policy (or by a separate Policy) against loss or damage by terrorist acts in an amount equal to 100% of the "Full Replacement Cost" of the Property; provided that such coverage is available. In the event that such coverage with respect to terrorist acts is not included as part of the "all risk" property policy required by subsection (a) above, Borrowers shall, nevertheless be required to obtain coverage for terrorism (as stand alone coverage) in an amount equal to 100% of the "Full Replacement Cost" of the Property; provided that such coverage is available. Borrowers shall obtain the coverage required under this subsection (j) from a carrier which otherwise satisfies the rating criteria specified in Section 7.1.2 (a "***Qualified Carrier***") or in the event that such coverage is not available from a Qualified Carrier, Borrower shall obtain such coverage from the highest rated insurance company providing such coverage.

7.1.2 **Policies**. All policies of insurance (the "***Policies***") required pursuant to Section 7.1.1 shall (i) be issued by companies approved by Lender and licensed to do business in the State, with a claims paying ability rating of "AA" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:X or better in the current Best's Insurance Reports; (ii) name Lender and its successors and/or assigns as their interest may appear as the mortgagee (in the case of property insurance), loss payee (in the case of business interruption/loss of rents coverage) and an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance), 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) contain a waiver of subrogation against Lender; (v) be assigned and the originals thereof delivered to Lender; (vi) contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither any Borrower, Lender nor any other party shall be a co-insurer under the Policies, (B) that Lender shall receive at least 30 days' prior written notice of any modification, reduction or cancellation of any of the Policies, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Lender, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums; (vii) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the

occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Loan Documents; and (viii) be satisfactory in form and substance to Lender and approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrowers shall pay the premiums for such Policies (the "***Insurance Premiums***") as the same become due and payable and furnish to Lender evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Lender pursuant to Section 3.3) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Lender. If Borrowers do not furnish such evidence and receipts at least 30 days prior to the expiration of any expiring Policy, then Lender may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Borrowers shall reimburse Lender for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Borrowers shall deliver to Lender a certified copy of each Policy within 30 days after its effective date. Within 30 days after request by Lender, Borrowers 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, and the like.

7.2 Casualty.

7.2.1 Notice; Restoration. If the Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "***Casualty***"), Borrowers shall give prompt notice thereof to Lender. Following the occurrence of a Casualty, Borrowers, regardless of whether insurance proceeds are available, but provided Lender makes all insurance proceeds available for such purpose, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to be of at least equal value and of substantially the same character as prior to such damage or destruction.

7.2.2 Settlement of Proceeds. If a Casualty covered by any of the Policies (an "***Insured Casualty***") occurs where the loss does not exceed $250,000, provided no Event of Default has occurred and is continuing, Borrowers may settle and adjust any claim without the prior consent of Lender; provided such adjustment is carried out in a competent and timely manner, and Borrowers are hereby authorized to collect and receipt for the insurance proceeds (the "***Proceeds***"). In the event of an Insured Casualty where the loss equals or exceeds $250,000 (a "***Significant Casualty***"), Lender may, in consultation with the Borrower (although Borrower's consent shall not be required) and in its reasonable discretion, settle and adjust any claim with the insurer(s) on the amount to be paid on the loss, and the Proceeds shall be due and payable solely to Lender and held by Lender in the Casualty/Condemnation Account and disbursed in accordance herewith. If any Borrower or any party other than Lender is a payee on any check representing Proceeds with respect to a Significant Casualty, such Borrower shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Lender. Each Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse such check payable to the order of Lender. The reasonable expenses incurred by Lender in the settlement, adjustment and collection of the Proceeds shall become part of the Debt and shall be reimbursed by Borrowers to Lender upon demand. Notwithstanding anything to the contrary contained herein, if in connection with a Casualty any insurance carrier makes a payment under the Property insurance Policy that Borrowers propose be treated as

business or rental interruption insurance, then, notwithstanding any designation (or lack of designation) by the insurance carrier as to the purpose of such payment, as between Lender and Borrowers, such payment shall not be treated as business or rental interruption insurance proceeds unless Borrowers have demonstrated to Lender's satisfaction that the remaining net Proceeds that will be received from the property insurance carriers and/or additional equity funds, as applicable, are available and are sufficient to pay 100% of the cost of fully restoring the Improvements or, if such net Proceeds are to be applied to repay the Debt in accordance with the terms hereof, that such remaining net Proceeds will be sufficient to pay the Debt in full.

7.3 Condemnation.

7.3.1 Notice; Restoration. Borrowers shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property (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, Borrowers, regardless of whether an Award is available, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to the extent practicable to be of at least equal value and of substantially the same character (and to have the same utility) as prior to such Condemnation.

7.3.2 Collection of Award. Lender is hereby irrevocably appointed as Borrowers' attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment in respect of a Condemnation (an "*Award*") and to make any compromise, adjustment or settlement in connection with such Condemnation. Notwithstanding any Condemnation (or any transfer made in lieu of or in anticipation of such Condemnation), Borrowers shall continue to pay the Debt at the time and in the manner provided for in the 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. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of the Award sufficient to pay the Debt. Borrowers shall cause any Award that is payable to Borrower to be paid directly to Lender. Lender shall hold such Award in the Casualty/Condemnation Account and disburse such Award in accordance with the terms hereof.

7.4 Application of Proceeds or Award.

7.4.1 Application to Restoration. If an Insured Casualty or Condemnation occurs where (i) the loss is in an aggregate amount less than the 30% of the unpaid Principal, (ii) in the reasonable judgment of Lender, the Property can be restored within six months, and prior to six months before the Stated Maturity Date and prior to the expiration of the rental or business interruption insurance with respect thereto, to the Property's pre-existing condition and utility as existed immediately prior to such Insured Casualty or Condemnation and to an economic unit not less valuable and not less useful than the same was immediately prior to the Insured Casualty or Condemnation, and after such restoration will adequately secure the Debt

and (iii) no Default or Event of Default shall have occurred and be then continuing, then the Proceeds or the Award, as the case may be (after reimbursement of any expenses incurred by Lender), shall be applied to reimburse Borrowers for the cost of restoring, repairing, replacing or rebuilding the Property (the "***Restoration***"), in the manner set forth herein. Borrowers shall commence and diligently prosecute such Restoration. Notwithstanding the foregoing, in no event shall Lender be obligated to apply the Proceeds or Award to reimburse any Borrower for the cost of Restoration unless, in addition to satisfaction of the foregoing conditions, both (x) Borrowers shall pay (and if required by Lender, Borrowers shall deposit with Lender in advance) all costs of such Restoration in excess of the net amount of the Proceeds or the Award made available pursuant to the terms hereof; and (y) Lender shall have received evidence reasonably satisfactory to it that during the period of the Restoration, the Rents will be at least equal to the sum of the operating expenses and Debt Service and other reserve payments required hereunder, as reasonably determined by Lender.

7.4.2 Application to Debt. Except as provided in Section 7.4.1, any Proceeds and/or Award may, at the option of Lender in its discretion, be applied to the payment of (i) accrued but unpaid interest on the Note, (ii) the unpaid Principal and (iii) other charges due under the Note and/or any of the other Loan Documents, or applied to reimburse Borrowers for the cost of any Restoration, in the manner set forth in Section 7.4.3. Any such prepayment of the Loan shall be without any Yield Maintenance Premium, unless an Event of Default has occurred and is continuing at the time the Proceeds are received from the insurance company or the Award is received from the condemning authority, as the case may be, in which event Borrowers shall pay to Lender an additional amount equal to the Yield Maintenance Premium, if any, that may be required with respect to the amount of the Proceeds or Award applied to the unpaid Principal.

7.4.3 Procedure for Application to Restoration. If any Borrower is entitled to reimbursement out of the Proceeds or an Award held by Lender, such Proceeds or Award shall be disbursed from time to time from the Casualty/Condemnation Account, which such funds were deposited in the Casualty/Condemnation Account pursuant to Section 3.8, upon Lender being furnished with (i) evidence satisfactory to Lender of the estimated cost of completion of the Restoration, (ii) a fixed price or guaranteed maximum cost construction contract for Restoration satisfactory to Lender, (iii) prior to the commencement of Restoration, all immediately available funds in addition to the Proceeds or Award that in Lender's judgment are required to complete the proposed Restoration, (iv) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey, permits, approvals, licenses and such other documents and items as Lender may reasonably require and approve in Lender's discretion, and (v) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work. Lender may, at Borrowers' expense, retain a consultant to review and approve all requests for disbursements, which approval shall also be a condition precedent to any disbursement. No payment made prior to the final completion of the Restoration shall exceed 90% of the value of the work performed from time to time; funds other than the Proceeds or Award shall be disbursed prior to disbursement of such Proceeds or Award; and at all times, the undisbursed balance of such Proceeds or Award 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 Borrowers for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien.

Provided no Default or Event of Default then exists, any surplus that remains out of the Proceeds held by Lender after payment of such costs of Restoration shall be paid to Borrowers. Any surplus that remains out of the Award received by Lender after payment of such costs of Restoration shall, be returned to Borrowers.

8. DEFAULTS

8.1 **Events of Default**. An "**Event of Default**" shall exist with respect to the Loan if any of the following shall occur:

(a) any portion of the Debt is not paid when due;

(b) any of the Taxes are not paid when due and remains unpaid after five days notice to Borrower from Lender (unless Lender is paying such Taxes pursuant to Section 3.3), subject to Borrowers' right to contest Taxes in accordance with Section 5.2;

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

(d) a Transfer other than a Permitted Transfer occurs;

(e) any representation or warranty made by any Borrower or Guarantor or in any Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by any Borrower or Guarantor in connection with any Loan Document, shall be false or misleading in any material respect as of the date the representation or warranty was made;

(f) any Borrower or Guarantor shall make an assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(g) a receiver, liquidator or trustee shall be appointed for any Borrower or Guarantor; or any Borrower or Guarantor shall be adjudicated a bankrupt or insolvent; or 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, any Borrower or Guarantor, as the case may be; or any proceeding for the dissolution or liquidation of any Borrower or Guarantor shall be instituted or any proceeding to partition the Property; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Borrower or Guarantor, as the case may be, only upon the same not being discharged, stayed or dismissed within 60 days;

(h) any Borrower breaches any covenant contained in Sections 5.12.1 (a) - (f), 5.13, 5.15, 5.22, 5.25, 5.28 or 5.31;

(i) except as expressly permitted hereunder, the actual or threatened alteration, improvement, demolition or removal of all or any of portion of the Improvements without the prior written consent of Lender;

(j) an Event of Default as defined or described elsewhere in this Agreement or in any other Loan Document occurs; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or to permit Lender to accelerate the maturity of any portion of the Debt;

(k) a default occurs under any term, covenant or provision set forth herein or in any other Loan Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired;

(l) [Intentionally deleted].

(m) if Key Principals fail to Control (as defined in clause (ii) of the defined term "Control" in Section 1.1) the Manager and the day-to-day management and operations of the Property (unless the Manager is replaced with a successor manager in accordance with and subject to satisfaction of the terms and conditions set forth in Section 5.12.2 or Section 5.12.3);

(n) a default shall be continuing under any of the other terms, covenants or conditions of this Agreement or any other Loan Document not otherwise specified in this Section 8.1, for ten days after notice to Borrowers (and Guarantor, if applicable) from Lender, in the case of any default which can be cured by the payment of a sum of money, or for 30 days after notice from Lender in the case of any other default; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, and Borrowers (or Guarantor, if applicable) shall have commenced to cure such default within such 30-day period and thereafter diligently and expeditiously proceeds to cure the same, such 30-day period shall be extended for an additional period of time as is reasonably necessary for Borrowers (or Guarantor, if applicable) in the exercise of due diligence to cure such default, such additional period not to exceed 60 days.

8.2 Remedies.

8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (f) or (g) of Section 8.1) and at any time and from time to time thereafter, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against any or all Borrowers and in and to the Property; including declaring the Debt to be immediately due and payable (including unpaid interest), Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers), without notice or demand; and upon any Event of Default described in paragraph (f) or (g) of Section 8.1, the Debt (including unpaid interest, Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers) shall immediately and automatically become due and payable, without notice or demand, and each Borrower hereby expressly waives any such notice or demand, anything contained in any Loan Document to the contrary notwithstanding.

8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrowers under the Loan Documents or at law or in equity may be exercised by Lender

at any time and from time to time, whether or not all or any of the Debt shall be declared, or be automatically, due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, each Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property, the Mortgage has been foreclosed, the Property has been sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full. To the extent permitted by applicable law, nothing contained in any Loan Document shall be construed as requiring Lender to resort to any portion of the Property for the satisfaction of any of the Debt in preference or priority to any other portion, and Lender may seek satisfaction out of the entire Property or any part thereof, in its discretion.

8.2.3 Severance. Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations and priorities of payment and liens as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies, provided that such severance shall not result in a material change in Borrowers' obligations under the Loan Documents. Each Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Each Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such severance, each Borrower ratifying all that such attorney shall do by virtue thereof.

8.2.4 Delay. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Agreement but subject to the terms of Section 10.1 hereof, Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of the Mortgage to the extent necessary to foreclose on all or any portion of the Property, the Rents, the Cash Accounts or any other collateral.

8.2.5 Lender's Right to Perform. If any Borrower fails to perform any covenant or obligation contained herein and such failure shall continue for a period of five Business Days after Borrowers' receipt of written notice thereof from Lender, without in any way

limiting Lender's right to exercise any of its rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Lender may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and all costs, expenses, liabilities, penalties and fines of Lender incurred or paid in connection therewith shall be payable by Borrowers to Lender upon demand and if not paid shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan Documents) and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Lender shall have no obligation to send notice to any Borrower of any such failure. Additionally, during the continuance of an Event of Default, Lender shall have the right, but not the obligation, to make any Protective Advance (hereinafter defined) (provided, however, that Lender will only make such Protective Advance from its own funds if there are insufficient funds in the Cash Accounts), and the same shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan Documents) and shall bear interest thereafter at the Default Rate. As used herein, "***Protective Advance***" 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, operating expenses, trade payables or other items with respect to the Property (including capital items) reasonably necessary to protect the Property or any other security given for the Loan or to preserve any of Lender's rights or remedies under the Loan Documents.

9. SPECIAL PROVISIONS

9.1 Sale of Note and Secondary Market Transaction.

9.1.1 General; Borrower Cooperation. Lender shall have the right at any time and from time to time (i) to sell or otherwise transfer the Loan or any portion thereof or the Loan Documents or any interest therein to one or more investors, (ii) to sell participation interests in the Loan to one or more investors or (iii) to securitize the Loan or any portion thereof in a single asset securitization or a pooled loan securitization of rated single or multi-class securities (the "***Securities***") secured by or evidencing ownership interests in the Note and the Mortgage (each such sale, assignment, participation and/or securitization is referred to herein as a "***Secondary Market Transaction***"). In connection with any Secondary Market Transaction, Borrowers shall, at Borrowers' reasonable expense, use all reasonable efforts and cooperate fully and in good faith with Lender and otherwise assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any such Secondary Market Transactions including: (a) to (i) provide such financial and other information with respect to the Property, Borrowers and their Affiliates, Manager and any tenants of the Property, (ii) provide business plans and budgets relating to the Property and (iii) perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested from time to time by Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to Lender pursuant to this paragraph (a) being called the "***Provided Information***"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to Lender and the Rating Agencies; (b) at Borrower's expense, cause counsel to

render opinions customary in securitization transactions with respect to the Property, Borrower and its Affiliates, which counsel and opinions shall be reasonably satisfactory to Lender and the Rating Agencies; (c) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Property, Borrowers and the Loan Documents as are customarily provided in such transactions and as may be reasonably requested by Lender or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents; (d) provide current certificates of good standing and qualification with respect to Borrowers from appropriate Governmental Authorities; and (e) execute such amendments to the Loan Documents and Borrowers' organizational documents, as may be requested by Lender or the Rating Agencies or otherwise to effect a Secondary Market Transaction, provided that nothing contained in this subsection (e) shall result in a material economic change in the transaction. Borrower shall pay all reasonable third party costs and expenses incurred by Lender in connection with a Secondary Market Transaction or a change in a material business term in the transaction, including but not limited to the terms hereof related to the tenants in common.

9.1.2 Use of Information. Borrowers understand that all or any portion of the Provided Information and the Required Records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "***Disclosure Document***") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "***Securities Act***"), or the Securities and Exchange Act of 1934, as amended (the "***Exchange Act***"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers or other parties relating to the Secondary Market Transaction. If the Disclosure Document is required to be revised, Borrowers shall cooperate with Lender in updating the Provided Information or Required Records for inclusion or summary in the Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to Borrowers, Manager and the Property necessary to keep the Disclosure Document accurate and complete in all material respects with respect to such matters.

9.1.3 Borrower Obligations Regarding Disclosure Documents. In connection with a Disclosure Document, Original Borrower (on behalf of Borrowers) shall: (a) if requested by Lender, certify in writing that Borrowers have carefully examined those portions of such Disclosure Document, pertaining to Borrowers, the Manager and the Loan, and that such portions do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) indemnify (in a separate instrument of indemnity, if so requested by Lender) (i) any underwriter, syndicate member or placement agent (collectively, the "***Underwriters***") retained by Lender or its issuing company affiliate (the "***Issuer***") in connection with a Secondary Market Transaction, (ii) Lender and (iii) the Issuer that is named in the Disclosure Document or registration statement relating to a Secondary Market Transaction (the "***Registration Statement***"), and each of the Issuer's directors, each of its officers who have signed the Registration Statement and each person or entity who controls the Issuer or the Lender within the meaning of Section 15 of the Securities Act or Section 30 of the Exchange Act (collectively within (iii), the "***GCM Group***"), and each of its directors and each person who controls each of

the Underwriters, within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the "*Underwriter Group*") for any losses, claims, damages or liabilities (the "*Liabilities*") to which Lender, the GCM Group or the Underwriter Group may become subject (including reimbursing all of them for any legal or other expenses actually incurred in connection with investigating or defending the Liabilities) insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any of the Provided Information or in any of the applicable portions of such sections of the Disclosure Document applicable to Borrowers, Manager, the Property or the Loan, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in the applicable portions of such sections or necessary in order to make the statements in the applicable portions of such sections in light of the circumstances under which they were made, not misleading; provided, however, that Borrowers shall not be required to indemnify Lender for any Liabilities relating to untrue statements or omissions which Borrowers identified to Lender in writing at the time of Borrowers' examination of such Disclosure Document.

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

9.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Section 9.1.3 or 9.1.4 of notice of the commencement of any action for which a claim for indemnification is to be made against Borrowers, such indemnified party shall notify Borrowers in writing of such commencement, but the omission to so notify Borrowers will not relieve Borrowers from any liability that they may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to Borrowers. If any action is brought against any indemnified party, and it notifies Borrowers of the commencement thereof, Borrowers will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel satisfactory to such indemnified party in its discretion. After notice from Borrowers to such indemnified party under this Section 9.1.5, Borrowers shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both Borrowers and an indemnified party, and any indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to Borrowers, then the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Borrowers shall not be liable for the expenses of more than

one separate counsel unless there are legal defenses available to it that are different from or additional to those available to another indemnified party.

9.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.3 or 9.1.4 is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.3 or 9.1.4, Borrowers shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(F) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the GCM Group's and Borrowers' relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender and Borrowers hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

9.1.7 Rating Surveillance. Lender will retain the Rating Agencies to provide rating surveillance services on Securities. The pro rata expenses of such surveillance will be paid for by Borrowers based on the applicable percentage of such expenses determined by dividing the then outstanding Principal by the then aggregate outstanding amount of the pool created in the Secondary Market Transaction which includes the Loan.

9.1.8 Severance of Loan. Lender shall have the right, at any time (whether prior to, in connection with, or after any Secondary Market Transaction), with respect to all or any portion of the Loan, to modify, split and/or sever all or any portion of the Loan as hereinafter provided. Without limiting the foregoing, Lender may (i) cause the Note and the Mortgage to be split into a first and second mortgage 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 Note (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 and by a pledge of partnership or membership interests (directly or indirectly) in Borrowers (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 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, Borrowers (and Borrowers' constituent members, if applicable, and Guarantor) shall execute within two (2) Business Days after such request, such documentation as Lender may reasonably request to evidence and/or effectuate any such modification or severance.

10. MISCELLANEOUS

10.1 Exculpation.

10.1.1 Subject to the qualifications below, Lender shall not enforce the liability and obligation of any Borrower to perform and observe the obligations contained in the Loan Documents by any action or proceeding wherein a money judgment shall be sought against such Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest and rights under the Loan Documents, or in the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against a Borrower only to the extent of such Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender shall not sue for, seek or demand any deficiency judgment against a Borrower in any such action or proceeding under or by reason of or under or in connection with any Loan Document.

10.1.2 The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any Loan Document; (ii) impair the right of Lender to name one or more Borrowers as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (iii) affect the validity or enforceability of any of the Loan Documents or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases; (vi) constitute a prohibition against Lender to commence any other appropriate action or proceeding in order for Lender to fully realize the security granted by the Mortgage or to exercise its remedies against the Property; or (vii) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrowers, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) (collectively, "***Lender's Losses***") arising out of or in connection with the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as "***Borrowers' Recourse Liabilities***"):

(a) fraud or intentional misrepresentation by any Borrower or Guarantor in connection with obtaining the Loan;

(b) physical waste of the Property or any portion thereof, or after an Event of Default the removal or disposal of any portion of the Property;

(c) any Proceeds paid by reason of any Insured Casualty or any Award received in connection with a Condemnation or other sums or payments attributable to the Property not applied in accordance with the provisions of the Loan Documents (except to the extent that a Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments);

(d) all Rents of the Property received or collected by or on behalf of any Borrower after an Event of Default and not applied to payment of Principal and interest due under the

Notes, and to the payment of actual and reasonable operating expenses of the Property, as they become due or payable (except to the extent that such application of such funds is prevented by bankruptcy, receivership, or similar judicial proceeding in which such Borrower is legally prevented from directing the disbursement of such sums);

(e) misappropriation (including failure to turn over to Lender on demand following an Event of Default) of tenant security deposits and rents collected in advance, or of funds held by any Borrower for the benefit of another party;

(f) the failure to pay Taxes, provided Borrowers shall not be liable (A) to the extent funds to pay such amounts are available in the Tax and Insurance Account and Lender failed to pay same;

(g) the breach of any representation, warranty, covenant or indemnification in any Loan Document concerning Environmental Laws or Hazardous Substances, including Sections 4.21 and 5.8, and clauses (viii) through (xi) of Section 5.30;

(h) the breach of Section 5.13;

(i) any Borrower or any Guarantor of such Borrower or any of their direct or indirect Affiliates taking any action or making any omission intended or reasonably likely to hinder, delay, impair or prevent Lender in or from enforcing any and all of its rights and remedies under or pursuant to the Loan Documents or at law or in equity (unless the same is brought in good faith and is reasonable in light of then-existing legal precedent or is determined in favor of such Borrower or Guarantor pursuant to a final, non-appealable judgment of a court of competent jurisdiction);

(j) the termination of, or failure to renew, the Management Agreement without Lender's consent, unless an acceptable replacement manager is appointed in accordance with Section 5.12.3 above (provided that only the Borrower(s) who voted in favor of such termination or failure to renew (or failed to consent to the appointment of such an acceptable replacement manager) will be liable under this provision);

(k) subject to the next succeeding sentence, the failure by any Borrower (each, for purposes of this subsection (k), a "***Dissenting Borrower***") to consent to a modification of the terms of the Loan in connection with a bona fide offer to purchase or refinance the Property or to prevent or cure an imminent or actual Event of Default after tenants in common constituting Borrower which together own 80 percent or more of the tenancy in common interests in the Property have approved such a modification. For purposes of this subsection (k), Lender shall have recourse solely against the Dissenting Borrower(s) to the extent of Lender's Losses with respect to the occurrence of any event giving rise to such matter which, for purposes of this subsection (k), (A) shall be deemed to be equal to any unpaid portion of the Debt that remains outstanding after Lender completes its realization with respect to the Property (and all of its other collateral for the Loan pursuant to any of the Loan Documents) and applies the proceeds of such realization to the Debt (the "Deficiency") and (B) with respect to each Dissenting Borrower shall be limited to an amount equal to the product of (1) the Deficiency and (2) such Dissenting Borrower's undivided tenant in common interest in the Property (expressed as a percentage).

10.1.3 Notwithstanding anything to the contrary in this Agreement or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(B) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt in accordance with the Loan Documents, and (B) Lender's agreement not to pursue personal liability of Borrowers as set forth above SHALL BECOME NULL AND VOID and shall be of no further force and effect, and the Debt shall be fully recourse to the applicable Borrower or Borrowers in an amount equal to the greater of (x) Lender's Losses arising out of or in connection with the following matters or (y) an amount equal to the product of (1) the unpaid balance of the Debt and (2) the applicable Borrower's respective undivided tenant in common interest in the Property (expressed as a percentage), in the event that one or more of the following occurs (each, a "***Springing Recourse Event***"): (i) an Event of Default described in Section 8.1(d) shall have occurred, (ii) the occurrence of any condition or event described in either Section 8.1(f) or Section 8.1(g) (each, an "***Insolvency Action***") and, with respect to such Insolvency Action, either any Borrower, Guarantor or any Person owning an interest (directly or indirectly) in any Borrower, or Guarantor consents to, aids, solicits, supports, or otherwise cooperates or colludes to cause such Insolvency Action or fails to contest such Insolvency Action, except in the event that any such party has a fiduciary or legal duty to take such action, (iii) any involuntary bankruptcy proceeding is brought by any Borrower or its Guarantor or any of such Borrower's or its Guarantor's Affiliates against any other Borrower; (iv) if subsequent to the commencement of any voluntary bankruptcy proceeding with respect to any Borrower, any involuntary bankruptcy proceeding is brought by Lender against one or more Borrowers and any Borrower or such Borrower's Guarantor files any motion contesting the same; or (v) any Borrower, such Borrower's Guarantor or any Affiliate of such Borrower brings or joins in any action or proceeding for the partition of the Property or any portion thereof or interest therein.

10.2 **Brokers and Financial Advisors**.

(a) Each Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan. Borrowers shall indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses (including attorneys' fees, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrowers in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Agreement and the repayment of the Debt.

(b) Notwithstanding anything in Section 10.2(a) above to the contrary, Borrower hereby acknowledges that (i) at Lender's sole discretion, a broker that arranged the Loan may receive further consideration from Lender relating to the Loan or any other matter for which Lender may elect to compensate such broker pursuant to a separate agreement between Lender and such broker and (ii) Lender shall have no obligation to disclose to Borrower the existence of any such agreement or the amount of any such additional consideration paid or to be paid to such broker whether in connection with the Loan or otherwise.

10.3 Retention of Servicer. Lender reserves the right to retain the Servicer to act as its agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction or otherwise, together with such other powers as are reasonably incidental thereto. Borrowers shall pay any reasonable fees and expenses of the Servicer (i) in connection with a release of the Property (or any portion thereof), (ii) from and after a transfer of the Loan to any "master servicer" or "special servicer" for any reason, including without limitation, as a result of a decline in the occupancy level of the Property, (iii) in connection with assumption or modification of the Loan, (iv) in connection with enforcement of the Loan Documents, or (v) in connection with any other action or approval taken by Servicer hereunder on behalf of Lender.

10.4 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as any of the Debt is unpaid or such longer period if expressly set forth in this Agreement. All Borrowers' covenants and agreements in this Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of Lender.

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

10.6 Governing Law.

(a) THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF SOUTH CAROLINA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF SOUTH CAROLINA SHALL GOVERN THE VALIDITY AND THE ENFORCEABILITY OF ALL LOAN DOCUMENTS AND THE DEBT. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR ANY BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN RICHLAND COUNTY, SOUTH CAROLINA, AND EACH BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH BORROWER DOES HEREBY DESIGNATE AND APPOINT CT CORPORATION SYSTEM AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN RICHLAND COUNTY, SOUTH CAROLINA, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE OF SUCH BORROWER MAILED OR DELIVERED TO SUCH BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON SUCH BORROWER (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE), IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF SOUTH CAROLINA. EACH BORROWER (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN SOUTH CAROLINA (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN SOUTH CAROLINA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

10.7 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by any Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on any Borrower shall entitle any Borrower to any other or future notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare an Event of Default for failure to effect prompt payment of any such other amount.

10.8 Trial by Jury. EACH BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN

DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

10.9 Headings/Exhibits. The Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. The Exhibits attached hereto, are hereby incorporated by reference as a part of the Agreement with the same force and effect as if set forth in the body hereof.

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

10.11 Preferences. Upon the occurrence and continuance of an Event of Default, Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrowers to any portion of the Debt. To the extent Borrowers make a payment to Lender, or Lender receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Debt or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender. This provision shall survive the expiration or termination of this Agreement and the repayment of the Debt.

10.12 Waiver of Notice. No Borrower shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or any other Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower and except with respect to matters for which such Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Each Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which no Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower.

10.13 Intentionally Omitted.

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

10.15 Offsets, Counterclaims and Defenses. Each Borrower hereby waives the right to offset any obligations to make payments required under the Loan Documents. Any assignee of Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which one or more Borrowers may otherwise have (including with respect to any default or dispute relating thereto) against any assignor of such documents, and no such offset shall be interposed or asserted by one or more Borrowers in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such offset in any such action or proceeding is hereby expressly waived by Borrowers.

10.16 Publicity. All news releases, publicity or advertising by any Borrower or its Affiliates through any media intended to reach the general public, which refers to the Loan Documents, the Loan, Lender or any member of the GCM Group, a Loan purchaser, the Servicer or the trustee in a Secondary Market Transaction, shall be subject to the prior written approval of Lender. Lender shall have the right to issue any of the foregoing without any Borrower's approval.

10.17 No Usury. Borrowers and Lender intend 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 10.17 shall control every other agreement in the 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 any other Loan Document, 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 Loan or any prepayment by Borrowers results in Borrowers having paid any interest in excess of that permitted by applicable law, then it is Borrowers' and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited against the unpaid Principal and all other Debt (or, if the Debt has been or would thereby be paid in full, refunded to Borrowers), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the 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 in any Loan Document, 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.

10.18 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that each is represented by separate counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

10.19 No Third Party Beneficiaries. The Loan Documents are solely for the benefit of Lender and Borrowers and nothing contained in any Loan Document shall be deemed to confer upon anyone other than the Lender and Borrowers any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

10.20 Yield Maintenance Premium. Borrowers acknowledge that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents and (b) if payments of Principal are made to Lender prior to the Stated Maturity Date, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan after an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs. For these reasons, and to induce Lender to make the Loan, Borrowers agree that, except as expressly provided in Sections 2.3 and 7, all prepayments, if any, whether voluntary or involuntary, will be accompanied by the Yield Maintenance Premium. Such Yield Maintenance Premium shall be required whether payment is made by one or more Borrowers, by a Person on behalf of one or more Borrowers, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrowers further acknowledge that (A) they are knowledgeable real estate developers and/or investors; (B) they fully understand the effect of the provisions of this Section 10.20, as well as the other provisions of the Loan Documents; (C) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrowers' obligation to pay a Yield Maintenance Premium (if required); and (D) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrowers also acknowledge that the provisions of this Agreement limiting the right of prepayment and providing for the payment of the Yield Maintenance Premium and other charges specified herein were independently negotiated and bargained for, and constitute a specific material part of the consideration given by Borrowers to Lender for the making of the Loan except as expressly permitted hereunder.

10.21 Assignment. The Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein may be assigned by Lender and any of its successors and assigns to any Person at any time in its discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise. Upon such assignment, all references to Lender in this Loan Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of Lender. No Borrower may assign its rights, title, interests or obligations under this Loan Agreement or under any of the Loan Documents, except in connection with a Permitted Transfer.

10.22 Original Borrower as Borrowers' Designee. Each of the Borrowers hereby authorizes, designates and directs Original Borrower to give Lender directions of any kind, to take the actions or make such deliveries specified herein to be taken or delivered by Original Borrower (including under Sections 6.3 and 9.1, and including with respect to any requisitions from any reserve accounts under Article 3) and to give and receive notices of any kind on behalf of such Borrower under this Agreement or any of the other Loan Documents. Any notice given by Lender to Original Borrower shall be deemed to have been given to each and every Borrower.

10.23 [Intentionally deleted.]

10.24 Joint and Several. Except to the extent expressly provided otherwise in the Loan Documents, each of the Borrowers shall be jointly and severally liable for payment of the Debt and performance of all other obligations of Borrowers (or any of them) under this Agreement or any other Loan Document.

10.25 Set-Off. In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, Lender shall have the right, without prior notice to any Borrower, any such notice being expressly waived by each Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by any Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrowers. Lender agrees promptly to notify Borrowers after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

10.26 1031 Exchange. Original Borrower acknowledges that it has established an ownership structure for the Property in order to, among other things, obtain certain tax benefits afforded under the provisions of Section 1031 of the Code. Each Borrower expressly acknowledges that, together with its own professional advisors and legal counsel, it has performed its own due diligence and legal analysis relating to a tenancy in common ownership structure and to the financial, tax, legal and other issues as it had deemed necessary or appropriate to make an informed investment decision to purchase a tenancy in common interest in the Property. Each Borrower expressly acknowledges that Lender has not acted in any way whatsoever as an advisor to any Borrower with respect to the foregoing and agrees that Lender shall have no responsibility or express or implied liability whatsoever with respect to any of the foregoing.

10.27 Certain Additional Rights of Lender. Notwithstanding anything to the contrary which may be contained in this Agreement, Lender shall have:

(i) the right to routinely consult with the Manager or Original Borrower regarding the significant business activities and business and financial developments of Borrowers, provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times;

(ii) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrowers during normal business hours upon reasonable notice;

(iii) the right, in accordance with the terms of this Agreement, to receive monthly, quarterly and year-end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness;

(iv) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to restrict financing to be obtained with respect to the Property so long as any portion of the Debt remains outstanding; and

(v) the right, without restricting any other right of Lender under this Agreement or the other Loan Documents (including any similar right), to restrict, upon the occurrence of an Event of Default, Borrowers' payments of management, consulting, director or similar fees to Affiliates of Borrowers from the Rents.

10.28 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

10.29 Reasonable Attorney's Fees. Whenever the term "reasonable attorney's fees" is used in the Loan Documents, such term shall be deemed to mean reasonable attorney's fees actually incurred without regard to any statute or case law regarding attorneys' fees as liquidated damages.

[Remainder of Page Intentionally Left Blank]

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

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company
Its Manager

By: _____
Name: H. Michael Schwartz
Title: President

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On 12/13/2007, before me, Timothy Joseph Levens, the undersigned, a notary public for the state, personally appeared H. Richard Schwartz, 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 _____ (SEAL)

TIMOTHY JOSEPH LEVENS
Commission # 1616483
Notary Public - California
Orange County
My Comm. Expires Oct 28, 2009

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, 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 _____ (SEAL)

Schedule 1

Required Repairs

FBPAPP-0137

Schedule 2

Exceptions to Representations and Warranties

NONE

Schedule 3

Organization of Borrower

Schedule 4

Definition of Special Purpose Bankruptcy Remote Entity

A "*Special Purpose Bankruptcy Remote Entity*" means (x) a limited liability company that is a Single Member Bankruptcy Remote LLC or (y) a corporation, limited partnership or limited liability company which at all times since its formation and at all times thereafter:

(i) was and will be organized solely for the purpose of (A) owning the Property or (B) acting as a general partner of the limited partnership that owns the Property or member of the limited liability company that owns the Property;

(ii) has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as general partner of the limited partnership that owns the Property or (C) acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not had and will not have any assets other than those related to the Property or its partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable;

(iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable);

(v) [Intentionally deleted]

(vi) [Intentionally deleted]

(vii) [Intentionally deleted]

(viii) if such entity is a limited liability company, has and will have articles of organization, a certificate of formation and/or an operating agreement, as applicable, providing that (A) such entity will dissolve only upon the bankruptcy of the managing member, (B) the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the limited liability company following the bankruptcy of the managing member is not obtained, the limited liability company may not liquidate the Property without the consent of the applicable Rating Agencies for as long as the Loan is outstanding;

(ix) has not, and without the unanimous consent of all of its partners, directors or members, as applicable, will not, with respect to itself or to any other entity

in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

(x) has remained and will remain solvent and has maintained and will maintain adequate capital in light of its contemplated business operations;

(xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;

(xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) has not commingled and will not commingle its funds or assets with those of any other Person;

(xv) has held and will hold its assets in its own name;

(xvi) has conducted and will conduct its business in its name,

(xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(xix) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(xx) has maintained and will maintain an arm's-length relationship with its Affiliates;

(xxi) (a) if such entity owns the Property, has and will have no indebtedness other than Permitted Indebtedness, or (b) if such entity acts as the general partner of a limited partnership which owns the Property, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Property which (1) do not exceed, at any time, $10,000 and (2) are paid within thirty (30) days of the date incurred, or (c) if such entity acts as a managing member of a limited liability company which owns the Property, has and will have no indebtedness other than

unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, $10,000 and (2) are paid within thirty (30) days of the date incurred;

(xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

(xxiii) has not and will not acquire obligations or securities of its partners, members or shareholders;

(xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(xxv) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(xxvii) has maintained 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 other Person;

(xxviii) has not made and will not make loans to any Person;

(xxix) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

(xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxxi) has and will have no obligation to indemnify its partners, officers, directors, members or Special Members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation; and

(xxxii) will consider the interests of its creditors in connection with all corporate, partnership or limited liability actions, as applicable.

"***Single Member Bankruptcy Remote LLC***" means a limited liability company organized under the laws of the State of Delaware which at all times since its formation and at all times thereafter

(i) complies with the following clauses of the definition of Special Purpose Bankruptcy Remote Entity above: (i)(A), (ii)(A), (iii), (iv), (ix), (x), (xi) and (xiii) through (xxxii); (ii) has maintained and will maintain its accounts, books and records separate from any other person; (iii) [intentionally deleted]; (iv) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) upon the occurrence of any event that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), the person designated as a "Special Member" of Borrower shall, without any action of any Person and simultaneously with Sole Member ceasing to be a member of Borrower, automatically be admitted as the sole member of Borrower (the "***Special Member***") and shall preserve and continue the existence of Borrower without dissolution, (B) no Special Member may resign or transfer its rights as Special Member unless a successor Special Member has been admitted to Borrower as a Special Member, and (C) except as expressly permitted pursuant to the terms of this Agreement, Sole Member may not resign and no additional member shall be admitted to Borrower; (v) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) Borrower shall be dissolved, and its affairs shall be would up only upon the first to occur of the following: (x) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the "***Act***") or (y) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (B) upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing to continue the existence of Borrower and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (C) the bankruptcy of Sole Member or a Special Member shall not cause such member or Special Member, respectively, to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution; (D) in the event of dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Borrower in an orderly manner), and the assets of Borrower shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (E) to the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Borrower or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of

the assets of Borrower, to compel any sale of all or any portion of the assets of Borrower pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

Schedule 5

Form of Guaranty of Recourse Obligations

(See attached)

Schedule 6

Form of Loan Assumption Agreement

(See attached)

Schedule 7

Rent Roll

(See Attached)

Schedule 8

Initial Annual Budget

PROMISSORY NOTE

$16,300,000 December 14, 2007

FOR VALUE RECEIVED, FONTAINE BUSINESS PARK, LLC, a Delaware limited liability company, having an address at 5 Financial Plaza, Suite 205, Napa, California 94558, hereby promises to pay to the order of GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation, at its principal place of business at 600 Steamboat Road, Greenwich, Connecticut 06830 (together with its successors and assigns "***Payee***"), or at such place as the holder hereof may from time to time designate in writing, the principal sum of SIXTEEN MILLION THREE HUNDRED THOUSAND DOLLARS ($16,300,000) (the "***Principal***"), in lawful money of the United States of America, with interest on the unpaid principal balance from time to time outstanding at the Interest Rate, in installments as follows:

A. On the date of funding, Borrowers shall pay interest, if any, on the unpaid Principal from the date of funding through and including January 5, 2008;

B. On February 6, 2008 and each Payment Date thereafter through and including January 6, 2011, Borrowers shall pay to Lender all unpaid interest accrued on the Principal at the Interest Rate; each of such payments, subject to the provisions of Section 3.12 of the Loan Agreement (hereinafter defined), to be applied to the payment of interest computed at the rate aforesaid;

C. On February 6, 2011 and each Payment Date thereafter through and including December 6, 2017 (as such date may be changed in accordance with Section 2.2.4 of the Loan Agreement), the Principal and interest thereon at the Interest Rate shall be payable in equal monthly installments of One Hundred Four Thousand Five Hundred Thirty-Two and 40/100 Dollars ($104,532.40.); which is based on the Interest Rate and a 30 year amortization schedule; each of such payments, subject to the provisions of Section 3.12 of the Loan Agreement (hereinafter defined), to be applied (a) to the payment of interest computed at the rate aforesaid; and (b) the balance applied toward the reduction of the principal sum;

D. The balance of the principal sum of this Note together with all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

1. **Definitions**. Capitalized terms used but not otherwise defined herein shall have the meanings given in that certain Loan Agreement (the "***Loan Agreement***") dated the date hereof between Maker and Payee. The following terms have the meanings set forth below:

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) 5% above the Interest Rate, compounded monthly.

Interest Period: (i) the period from the date hereof through the first day thereafter that is the 5th day of a calendar month and (ii) each period thereafter from the 6th day of each calendar month through the 5th day of the next calendar month; except that the Interest Period, if any, that would otherwise commence before and end after the Maturity Date shall end on the Maturity Date. Notwithstanding the foregoing, if Payee exercises its right to change the Payment Date to a New Payment Date in accordance with Section 2.2.4 of the Loan Agreement, then from and after such election, each Interest Period shall be the period from the New Payment Date in each calendar month through the day in the next succeeding calendar month immediately preceding the New Payment Date in such calendar month.

Interest Rate: a rate of interest equal to Six and Sixty-Four One Hundredths Percent (6.64%) (or, when applicable pursuant to this Note or any other Loan Document, the Default Rate).

Maturity Date: the date on which the final payment of principal of this Note (or the Defeased Note, if applicable) becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Payment Date: the 6th day of each calendar month or, upon Payee's exercise of its right to change the Payment Date in accordance with Section 2.2.4 of the Loan Agreement, the New Payment Date (in either case, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter).

Stated Maturity Date: January 6, 2018, as such date may be changed in accordance with Section 2.2.4 of the Loan Agreement.

Treasury Rate: The annualized yield on securities issued by the United States Treasury having a maturity corresponding to the remaining term to the originally scheduled Stated Maturity Date of this Note, as quoted in Federal Reserve Statistical Release H. 15(519) under the heading "U.S. Government Securities - Treasury Constant Maturities" for the Treasury Rate Determination Date, converted to a monthly equivalent yield. If yields for such securities of such maturity are not shown in such publication, then the Treasury Rate shall be determined by Lender by linear interpolation between the yields of securities of the next longer and next shorter maturities. If said Federal Reserve Statistical Release or any other information necessary for determination of the Treasury Rate in accordance with the foregoing is no longer published or is otherwise unavailable, then the Treasury Rate shall be reasonably determined by Lender based on comparable data.

Treasury Rate Determination Date: The date which is five banking days prior to the scheduled prepayment date. Lender shall notify Borrower of the amount and the basis of determination of the required Yield Maintenance Premium.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under this Note through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amount and/or Monthly Interest Payment Amount, as the case may be, required under this Note through the Stated Maturity Date together with the outstanding principal balance of this Note as of the Stated Maturity Date assuming payments of all such Monthly Debt Service Payment Amounts and/or Monthly Interest Payment Amounts, as the case may be, are made (including any servicing costs associated therewith). In no event shall the Yield Maintenance Premium be less than zero.

2. **Payments and Computations**. Interest on the unpaid Principal shall be computed on the basis of the actual number of days elapsed over a 360-day year. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever and are payable without relief from valuation and appraisement laws and with all costs and charges incurred in the collection or enforcement hereof, including, reasonable attorneys' fees and court costs.

3. **Loan Documents**. This Note is evidence of that certain loan made by Payee to Maker contemporaneously herewith and is executed pursuant to the terms and conditions of the Loan Agreement. This Note is secured by and entitled to the benefits of, among other things, the Mortgage and the other Loan Documents. Reference is made to the Loan Documents for a description of the nature and extent of the security afforded thereby, the rights of the holder hereof in respect of such security, the terms and conditions upon which this Note is secured and the rights and duties of the holder of this Note. All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents to be kept and performed by Maker are by this reference hereby made part of this Note to the same extent and with the same force and effect as if they were fully set forth in this Note, and Maker covenants and agrees to keep and perform the same, or cause the same to be kept and performed, in accordance with their terms.

4. **Loan Acceleration; Prepayment**. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (f) or (g) of Section 8.1 of the Loan Agreement) and at any time and from time to time thereafter, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Maker and in and to the Property; including declaring the Debt to be immediately due and payable and upon any Event of Default described in paragraph (f) or (g) of Section 8.1 of the Loan Agreement, the Debt (including unpaid interest, Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Maker) shall immediately and automatically become due and payable, without notice or demand. Maker shall have no right to prepay or defease all or any portion of the Principal except in accordance with Sections 2.3.2, 2.3.3, 2.3.4 and 2.4 of the Loan Agreement. If the Debt is accelerated by reason of an Event of Default, then the Debt shall include, and Payee shall be entitled to receive, in

addition to the outstanding principal and accrued interest and other sums due under the Loan Documents, an amount equal to the Yield Maintenance Premium, if any, that would be required in connection with a Defeasance if a Defeasance were to occur at the time of Payee's acceptance of such tender or other receipt of the Debt (through foreclosure or otherwise), as the case may be. The principal balance of this Note is subject to mandatory prepayment, without premium or fee, in certain instances of Insured Casualty or Condemnation, as more particularly set forth in Sections 2.3.2 and 7.4.2 of the Loan Agreement. Except during the continuance of an Event of Default, all proceeds of any repayment, including permitted prepayments, of Principal shall be applied in accordance with Section 2.3 of the Loan Agreement. During the continuance of an Event of Default, all proceeds of repayment, including any payment or recovery on the Property (whether through foreclosure, deed-in-lieu of foreclosure, or otherwise) shall, unless otherwise provided in the Loan Documents, be applied in such order and in such manner as Payee shall elect in Payee's discretion.

[NO FURTHER TEXT THIS PAGE]

BORROWER HEREBY EXPRESSLY WAIVES THE RIGHT TO PREPAY THE INDEBTEDNESS EVIDENCED HEREBY IN WHOLE OR PART WITHOUT PAYMENT OF A PREPAYMENT PREMIUM OR FEE EXCEPT AS PROVIDED IN THE LOAN DOCUMENTS, AND EXPRESSLY AGREES TO PAY THE AMOUNTS REQUIRED IN THE LOAN DOCUMENTS IN THE EVENT OF AN ACCELERATION. BORROWER AGREES THAT THE PREPAYMENT CONSIDERATION REQUIRED HEREIN IS REASONABLE. BORROWER HAS GIVEN INDIVIDUAL WEIGHT TO THE CONSIDERATION IN THIS TRANSACTION FOR THIS WAIVER AND AGREEMENT. BORROWER HEREBY EXPRESSLY WAIVES THE BENEFIT OF ANY STATUTES, PRINCIPLES, AND RULES OF LAW OF SIMILAR EFFECT.

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company,
Its Manager

By: _____
H. Michael Schwartz,
President

5. **Default Rate**. After the occurrence and during the continuance of an Event of Default, the entire unpaid Debt shall bear interest at the Default Rate, and shall be payable upon demand from time to time, to the extent permitted by applicable law.

6. **Late Payment Charge**. If any Principal, interest or other sum due under any Loan Document is not paid by Maker on the date on which it is due, Maker shall pay to Payee upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by applicable law, in order to defray the expense incurred by Payee in handling and processing such delinquent payment and to compensate Payee for the loss of the use of such delinquent payment.

7. **Amendments**. This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Maker or Payee, 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. Whenever used, the singular number shall include the plural, the plural the singular, and the words "***Payee***" and "***Maker***" shall include their respective successors, assigns, heirs, executors and administrators. If Maker consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

8. **Waiver**. Maker and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest, notice of protest, notice of nonpayment, notice of intent to accelerate the maturity hereof and of acceleration. No release of any security for the Debt or any person liable for payment of the Debt, no extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of the Loan Documents made by agreement between Payee and any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker, and any other person or party who may become liable under the Loan Documents, for the payment of all or any part of the Debt.

9. **Exculpation**. It is expressly agreed that recourse against Maker for failure to perform and observe its obligations contained in this Note shall be limited as and to the extent provided in Section 10.1 of the Loan Agreement.

10. **Notices**. All notices or other communications required or permitted to be given pursuant hereto shall be given in the manner specified in the Loan Agreement directed to the parties at their respective addresses as provided therein.

11. **Joint and Several**. Each Person constituting Maker hereunder shall have joint and several liability for the obligations of Maker hereunder subject to the provisions of the Loan Agreement, including without limitation Section 10.1 of the Loan Agreement.

12. **Governing Law. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

[Signature Page Follows]

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of the day and year first written.

MAKER:

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company,
Its Manager

By: _____
H. Michael Schwartz,
President

Instrument: 2007110730 Book/Page: R1384 : 3723 DateTime: 12/18/2007 9:41:42 AM

Recording Requested By:

When Recorded Mail to:

Greenwich Capital Financial Products, Inc.
c/o Allen Matkins Leck Gamble Mallory & Natsis LLP
515 South Figueroa Street, 7th Floor
Los Angeles, CA 90071-3398
Attention: Gregg J. Loubier

Book 1384-3723
2007110730 12/18/2007 09:41:42:400 Mortgage
Fee:$27.00 County Tax:$0.00 State Tax:$0.00
2007110730 Richard W. Rodden Richland County ROD

Space Above This Line For Recorder's Use

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

BY

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company,

as Mortgagor,

TO

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.,
as Mortgagee

Dated as of December 14, 2007

1. THIS INSTRUMENT COVERS FIXTURES AND CONSTITUTES A FIXTURE FILING FINANCING STATEMENT.

2. TO THE EXTENT PROVIDED IN THE NOTE OR ANY OTHER OBLIGATION WHICH THE LIEN OF THIS INSTRUMENT SECURES, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.

Richland County ROD
Richard W. Rodden
This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3724 DateTime: 12/18/2007 9:41:42 AM

Richland County RDD

Richard W. Rodden

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "***Mortgage***"), made as of December 14, 2007, by **FONTAINE BUSINESS PARK, LLC**, a Delaware limited liability company, having an office at 5 Financial Plaza, Suite 205, Napa, California 94558 ("***Mortgagor***"), to **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation (together with its successors and assigns, hereinafter referred to as "***Mortgagee***"), having an address at 600 Steamboat Road, Greenwich, Connecticut 06830.

Mortgagor and Mortgagee have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "***Loan Agreement***") pursuant to which Mortgagee is making a secured loan to Mortgagor in the aggregate original principal amount of $16,300,000 (the "***Loan***"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a Note dated the date hereof made by Mortgagor to Mortgagee in such principal amount with a maturity date of January 6, 2018 (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "***Note***").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "***Loan Documents***"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "***Bankruptcy Code***"), (ii) the costs and expenses of enforcing any provision of any Loan Document, and (iii) all future advances and readvances that may be made by Mortgagee to Mortgagor intended to be secured hereby (but nothing in this clause shall be deemed to create any obligation to make or borrow future advances or readvances), provided, however, that the aggregate secured hereby including future advances and readvances at any one time outstanding shall not exceed the principal sum of $32,600,000 plus accrued interest, attorneys' fees and court costs (all such sums being hereinafter collectively referred to as the "***Debt***"), Mortgagor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee, all right, title and interest of the Mortgagor in the land described in Exhibit A (the "***Premises***"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "***Improvements***");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises,

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3725 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "*Property*"):

(a) all the estate, right, title, claim or demand whatsoever of Mortgagor either in law or in equity, in possession or expectancy, of, in and to the Property or any part thereof;

(b) 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, 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(c) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "*Equipment*"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Property is located (the "*UCC*"), superior in lien to the lien of this Mortgage;

(d) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(e) all leases, subleases 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 or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "*Leases*") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including 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

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3726 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as 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;

(f) all proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(h) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including 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 (hereinafter collectively referred to as the "*Intangibles*");

(i) all right, title and interest of each entity constituting Mortgagor, as tenants in common, under and pursuant to the Property Agreements, as defined in the Loan Agreement dated concurrently herewith between Lender and Borrower (the "*Property Agreements*"), including, without limitation, that certain Co-Ownership Agreement with respect to the Property (the "*Tenant in Common Agreement*"), including any rights of first refusal (including such rights arising under Section 363(i) of Chapter 11 of the United States Bankruptcy Code), purchase options or other similar rights afforded to any tenant in common under the Tenant in Common Agreement; and

(j) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3727 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

Rents acquired by the Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever, subject to the Permitted Encumbrances, as defined in the Loan Agreement;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

PART I- GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

2. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Property and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Clearing Account). Upon an Event of Default, and after Mortgagee sends a revocation of license notice to the Mortgagor, the license granted to Mortgagor herein shall be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in the Clearing Account, the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Property. Mortgagor hereby grants and assigns to Mortgagee the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3728 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

3. Use of Property. Mortgagor 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 Property. If under applicable zoning provisions the use of the Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Property, (ii) permit or suffer to occur any waste on or to the Property or (iii) take any steps to convert the Property to a condominium or cooperative form of ownership.

4. Transfer or Encumbrance of the Property.

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the Debt, and (iii) Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(b) Mortgagee 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 Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer.

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

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3729 DateTime: 12/18/2007 9:41:42 AM

Richland County, ROD

Richard W. Rodden

Borrower in connection with any such declaration shall be at par, and free of any yield maintenance or other prepayment penalty or fee.

6. No Credits on Account of the Debt. Mortgagor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable. Payment of the Debt by Borrower in connection with any such declaration shall be at par, and free of any yield maintenance or other prepayment penalty or fee.

7. Further Acts, Etc. Mortgagor shall, at its sole cost, do execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan and the Loan Documents in connection with a Secondary Market Transaction as described in Section 9.1 of the Loan Agreement. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, 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 the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence, Mortgagee shall not execute any document as attorney-in-fact of Mortgagor unless (x) Mortgagor shall have failed or refused to execute the same within two (2) Business Days after Mortgagee's request therefor. Mortgagee shall give prompt notice to Mortgagor of any exercise of the power of attorney as provided for in this Paragraph 7, along with copies of all documents executed in connection therewith.

8. Recording of Mortgage, Etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and

Instrument: 2007110730 Book/Page: R1384 : 3730 DateTime: 12/18/2007 9:41:42 AM

indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.

9. Right to Cure Defaults. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

10. Remedies.

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

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

(ii) give such notice of default and of election to cause the Property to be sold as may be required by law or as may be necessary to cause Mortgagee to exercise the power of sale granted herein; Mortgagee shall then record and give such notice of Mortgagee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Mortgagee, or by Mortgagor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Mortgagee, from time to time, may postpone or continue the sale of all or any portion of the Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Mortgagee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;

(iii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Property 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;

Richland County ROD
Richard W. Rodden
This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3731 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

(iv) 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 Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(v) sell for cash or upon credit the Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, 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;

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

(vii) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;

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

(ix) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Property to the payment of the 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, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(x) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(xi) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all

Instrument: 2007110730 Book/Page: R1384 : 3732 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage 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 law, Mortgagee, 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, Mortgagee, 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. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor 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 Paragraph 10, 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 Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the 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 Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3733 DateTime: 12/18/2007 9:41:42 AM

Richland County KOD

Richard W. Rodden

any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law and subject to the provisions of Section 10.29 of the Loan Agreement), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. Right of Entry. In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Property after reasonable prior notice during business hours during the term of this Mortgage. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate; provided, however, that Mortgagor's obligation to pay Mortgagee for the cost of such inspection shall not exceed $750 for each inspection and Mortgagor shall not be obligated to pay for more than two such inspections in any calendar year.

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3734 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

12. Security Agreement.

(a) This Mortgage is both a real property Mortgage and a "security agreement" within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the UCC (such portion of the Property so subject to the UCC being called in this paragraph the "***Collateral***"). This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. 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 Mortgage. If an Event of Default shall occur, Mortgagee, 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 UCC, 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 Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee 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 Mortgagee with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Mortgagee'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 Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Mortgagee 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 Mortgagor's obligations under the Loan Documents.

(b) Mortgagor hereby absolutely and unconditionally pledges and assigns to Mortgagee as additional security all of Mortgagor's right, title and interest in, to and under the Property Agreements, including without limitation, the Tenant in Common Agreement, effective immediately upon execution of each of the Property Agreements and without further notice to or by any party hereto (except that Mortgagor agrees to provide to Mortgagee true and correct copies of such agreements promptly after execution thereof); provided that Mortgagee shall have no obligation or liability under any of the Property Agreements.

Instrument: 2007110730 Book/Page: R1384 : 3735 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

13. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect its or their interest in the Property. Mortgagee shall, at its option, be subrogated to the lien of any 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.

14. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

15. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

16. Inapplicable Provisions. If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

17. Headings. The paragraph headings in this Mortgage 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.

18. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "*Mortgagor*" shall mean "each

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3736 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "*Mortgagee*" shall mean "Mortgagee and any subsequent holder of the Note," the words "*Property*" shall include any portion of the Property and any interest therein, the word "including" means "including but not limited to" and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property and Collateral and enforcing its rights hereunder.

20. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part thereof.

21. Assignments. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

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

INITIALS: _____

23. Consents. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee 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 Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor 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 Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3737 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

24. Loan Repayment and Defeasance. Provided no Event of Default exists, the Lien of this Mortgage shall be terminated, released and reconveyed of record by Mortgagee (and the Mortgagee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

25. Governing Law. **This Mortgage shall be governed by, and be construed in accordance with, the laws of the state in which the Property is located without regard to conflict of law provisions thereof.**

26. Exculpation. The liability of Mortgagor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

27. Mortgagee; Successor Mortgagee. Mortgagee shall not be liable for any error of judgment or act done by Mortgagee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Mortgagee's gross negligence or willful misconduct. Mortgagee shall not be personally liable in case of entry by Mortgagee or anyone acting by virtue of the powers herein granted Mortgagee upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. Mortgagee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Mortgagee hereunder or believed by Mortgagee to be genuine. Mortgagee shall be entitled to reimbursement for actual expenses incurred by Mortgagee in the performance of Mortgagee's duties hereunder and to reasonable compensation for such of Mortgagee's services hereunder as shall be rendered. Mortgagor will, from time to time, reimburse Mortgagee for and save and hold Mortgagee harmless from and against any and all loss, cost, liability, damage and reasonable expense whatsoever incurred by Mortgagee in the performance of Mortgagee's duties, but excluding however, any of same arising directly from Mortgagee's gross negligence or willful misconduct. All monies received by Mortgagee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Mortgagee shall be under no liability for interest on any monies received by Mortgagee hereunder. Mortgagee may resign by giving of notice of such resignation in writing to Mortgagee. If Mortgagee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Mortgagee or if for any or no reason and without cause Mortgagee shall prefer to appoint a substitute Mortgagee to act instead of the original Mortgagee named herein, or any prior successor or substitute Mortgagee, Mortgagee shall, without any formality or notice to Mortgagor or any other person, have full power to appoint a substitute Mortgagee and, if Mortgagee so elects, several substitute Mortgagees in succession who shall succeed to all the estate, rights, powers and duties of the aforenamed Mortgagee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Mortgage, and the description of the real property herein described, which instrument, executed and acknowledged by Mortgagee, shall (i) be conclusive proof of the proper substitution and appointment of such successor Mortgagee or Mortgagees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Mortgagee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Mortgagee ceasing to act shall duly assign, transfer, and deliver any of

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3738 DateTime: 12/18/2007 9:41:42 AM

the property and monies held by Mortgagee to the successor Mortgagee so appointed in its or his place. The Mortgagee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of Mortgagee hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Mortgagee to be present in person at any foreclosure sale.

28. Special State Provisions.

(a) Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PREMISES.

(b) Additional Provisions. Any receiver appointed under this Mortgage shall have all of the usual powers and duties of receivers pursuant to South Carolina common and statutory law, including, but not limited to, South Carolina Code Section 15-65-10, as amended, modified and/or replaced from time to time.

(c) Compliance with Applicable Law. Anything elsewhere herein contained to the contrary notwithstanding:

1. In the event that any provision under this Mortgage shall be inconsistent with any provision of Article 7, Title 29 of the South Carolina Code of Laws (the "Foreclosure Article"), the provisions of the Foreclosure Article shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner inconsistent with the Foreclosure Article; and

2. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to provisions of this Mortgage, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee or such receiver under the Foreclosure Article in the absence of said provision, Mortgagee and such receiver shall be vested with the rights granted under the Foreclosure Article to the full extent permitted by law.

[*Remainder of page intentionally left blank*]

Richland County ROD
Richard W. Rodden
This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3739 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed under seal as of the date first written above.

Signed, sealed and delivered in the presence of:

Witness

Witness

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company,
Its Manager

By: _____
H. Michael Schwartz,
President

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On 12/13/2007, before me, TIMOTHY JOSEPH LEVENS, ~~the undersigned~~, a notary public for the state, personally appeared H. MICHAEL SCHWARTZ, ~~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 _____ (SEAL)

TIMOTHY JOSEPH LEVENS
Commission # 1616483
Notary Public - California
Orange County
My Comm. Expires Oct 28, 2009

Greenwich Capital/Anderson Station
776093.04/LA
G3534-001/12-12-07/mmj/nunj

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 , 3740 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3741 DateTime: 12/18/2007 9:41:42 AM

Richland County ROD

Richard W. Rodden

EXHIBIT A

Legal Description

TRACT 1 (FONTAINE I, 300 ARBOR LAKE DRIVE): TMS No. 14207-02-01

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 5, FONTAINE I, CONTAINING 13.60 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 12, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION I BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 386.

TRACT 2 (FONTAINE II, ARBOR LAKE DRIVE): TMS NO. 14207-02-02

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 6, FONTAINE II, CONTAINING 9.08 ACRES, MORE OR LESS, ON THE "SUBDIVISION" PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

Instrument: 2007110730 Book/Page: R1384 : 3742 DateTime: 12/18/2007 9:41:42 AM

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 393.

TRACT 3 (FONTAINE III, 200 ARBOR LAKE DRIVE): TMS NO. 14203-13-02

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 3-A, CONTAINING 0.82 OF AN ACRE, MORE OR LESS, AND LOT 3-B, CONTAINING 3.96 ACRES, MORE OR LESS. FONTAINE III, CONTAINING IN THE AGGREGATE 4.78 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARE BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE III BY METES AND BOUNDS.

TOGETHER WITH, ALSO, NONE EXCLUSIVE PERPETUAL EASEMENTS FOR ACCESS, OVER AND ACROSS THE AREAS IDENTIFIED AS PARCEL "B-1" AND PARCEL "C" ON THE ABOVE-DESCRIBED PLAT AND THE RIGHT OF PEDESTRIAN AND VEHICULAR ACCESS FOR INGRESS, EGRESS AND REGRESS OVER AND ACROSS ALL EXISTING INTERNAL DRIVES WITHIN THE PARKING LOT(S) NOW OR HEREAFTER LOCATED ON THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS PROPERTY, AS SHOWN ON A PLAT RECORDED IN PLAT BOOK 54 AT PAGE 1448, AND AS DESCRIBED IN THE DEED FROM NATIONS BANK OF NORTH CAROLINA, N.A., AS TRUSTEE FOR THE NCNB REAL ESTATE FUND, TO THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS, A DIVISION OF THE STATE OF SOUTH CAROLINA BUDGET AND CONTROL BOARD, DATED JULY 16, 1992 AND RECORDED ON JULY 16, 1992 IN RICHLAND COUNTY ROD DEED BOOK D-1100 AT PAGE 350.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TRACT 4 (FONTAINE V, N/S ARBOR LAKE DRIVE): TMS NO. 14203-13-01

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE BEING SHOWN AS LOT 4, FONTAINE V, CONTAINING 2.32 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

Richland County ROD
Richard W. Rodden
This document is not to scale

Instrument: 2007110730 Book/Page: R1384 : 3743 DateTime: 12/18/2007 9:41:42 AM

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 405.

THIS BEING THE SAME PROPERTY CONVEYED TO FONTAINE BUSINESS PARK, LLC, ET. AL., BY DEED OF AP SOUTHEAST PORTFOLIO PARTNERS, L.P., DATED DECEMBER 18, 2007 AND RECORDED DECEMBER 18, 2007, IN RECORD BOOK 1384 AT PAGE 3712

Richland County ROD

Richard W. Rodden

ASSIGNMENT AND ASSUMPTION OF LOAN AND RELATED LOAN DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF LOAN AND RELATED LOAN DOCUMENTS (the "*Assignment*") is entered into as of May 16, 2008, by **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.** ("*Assignor*"), for the benefit of **THE ROYAL BANK OF SCOTLAND PLC** ("*Assignee*").

RECITALS

WHEREAS, Assignor is the owner and holder of certain interests in the mortgage loans identified on Exhibit A attached hereto (collectively, the "*Loans*"). The Loans are in respect of the properties (collectively, the "*Properties*") owned or leased by the respective borrowers (collectively, the "*Borrowers*") under those Loans; and

WHEREAS, the Loans are evidenced by certain Loan Documents (as hereinafter defined).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

Assignor hereby absolutely sells, transfers, assigns, delivers, sets-over and conveys to Assignee, without representation, warranty or recourse of any nature whatsoever, all of Assignor's right, title and interest, and delegates all of its duties and obligations, in, to and under the Loans and all related documents evidencing, governing, securing and pertaining to such Loans (collectively, the "*Loan Documents*"), including, without limitation, the following:

(i) All documents and instruments evidencing the obligations, liabilities and indebtedness of Borrowers in connection with the Loans; and

(ii) All other instruments executed and delivered by or on behalf of Borrowers to Assignor encumbering, or creating a lien upon, any Properties, as security for repayment of the Loans; and

(iii) All guaranties, insurance policies, indemnifications, releases, affidavits, certificates, title insurance policies, letters of credit and other documents executed and/or delivered by or on behalf of Borrowers to Assignor in connection with the Loans; and

(iv) All assignments and/or pledges, if any, whether direct or collateral, made by Borrowers to Assignor, of leases, rents, beneficial or equitable interests, proceeds, royalties, contracts, plans, specifications, permits, licenses, reserves, holdbacks, escrows, stocks, bonds, securities and any other such assignments of collateral that evidence and/or secure the Loans;

(v) All intercreditor agreements, participation agreements, co-lender agreements, servicing agreements, or similar agreements entered into by Assignor in connection with the Loans; and

(vi) All modifications, amendments, consolidations, renewals, extensions or restatements of any of the foregoing.

By its acceptance of this Assignment, Assignee hereby assumes all of the obligations of Assignor in connection with or arising out of the Loans and the related Loan Documents accruing from and after the date hereof.

[*NO FURTHER TEXT ON THIS PAGE*]

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed by its proper officers, as of the date first written above.

ASSIGNOR:

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: _____
Name: Andrew B. Snow
Title: Senior Vice President

ASSIGNEE:

THE ROYAL BANK OF SCOTLAND PLC

By: Greenwich Capital Markets, Inc., its agent

By: _____
Name: Andrew B. Snow
Title: Senior Vice President

EXHIBIT A

Loans

GCFP Loan #	GCM Internal Cusip	Loan Name	Original balance	City	State	Prop Type
07-0821	CMBLA0821	Fontaine Business Park	16,300,000	Columbia	SC	Office
Total						

31648466.DOC

RB1456/3609

Instrument Number: 2008066927 BookPage: R1456:3609 DateTime: 08/20/2008 12:06:35:880

Return acknowledgment to:

[redacted]
Capitol Services, Inc.
P.O. Box 6300 Albany, NY 12206
800/662-0171

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.
(Assignor)

to

the person or entity described on Exhibit B attached hereto

(Assignee)

Dated: As of May 16, 2008

Property Location: County of Richland
State of South Carolina

DOCUMENT PREPARED BY

Jeanette Bionda, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Book 1456-3609
2008066927 08/20/2008 12:06:35 880 Assgnt Lease Rent Profit
Fee:$13.00 County Tax:$0.00 State Tax: $0.00
2008066927 Richard W Rodden Richland County ROD

420716CT
31674064.DOC

Richland County ROD
John G. Norris
This Document is not to scale

Instrument Number: 2008066927 BookPage: R1456:3610 DateTime: 08/20/2008 12:06:35:880

Richland County ROD

John G. Norris

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation, whose address is 600 Steamboat Road, Greenwich, Connecticut 06830 ("Assignor"), as the holder of the instrument hereinafter described and for valuable consideration hereby endorses, assigns, sells, transfers and delivers to the person or entity described on Exhibit B attached hereto ("Assignee"), having an address set forth on Exhibit B attached hereto, its successors, participants and assigns, without recourse or warranty, all right, title and interest of Assignor in and to that certain Assignment of Leases and Rents by **FONTAINE BUSINESS PARK, LLC**, a Delaware limited liability company (the "Borrower") in favor of Assignor dated as of December 14, 2007 and recorded on December 18, 2007 in Richland County, South Carolina in Record Book 1384 Page 3744 (as the same have heretofore been amended, modified, restated, supplemented, renewed or extended), securing payment of an Promissory Note dated as of December 20, 2007, in the original principal amount of SIXTEEN MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS ($16,300,000.00) made by the Borrower, payable to the order of Assignor and creating a first lien on the property described in Exhibit A attached hereto and by this reference made a part hereof.

Together with any and all notes and obligations therein described, the debt and claims secured thereby and all sums of money due and to become due thereon, with interest provided for therein, and hereby irrevocably appoints Assignee hereunder its attorney to collect and receive such debt, and to foreclose, enforce and satisfy the foregoing the same as it might or could have done were these presents not executed, but at the cost and expense of Assignee.

Together with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor hereunder possesses or to which Assignor is otherwise entitled as additional security for the payment of the notes and other obligations described herein.

This Assignment shall be governed in all respects by the laws of the State of South Carolina and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE ADDENDUM ON THE FOLLOWING PAGE]

This Document is not to scale

Instrument Number: 2008066927 BookPage: R1456:3611 DateTime: 08/20/2008 12:06:35:880

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed by its duly authorized officer on this 21st of July, 2008.

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: _____
Name: Andrew B. Snow
Title: Senior Vice President

Richland County ROD

John G. Norris

This Document is not to scale

Instrument Number: 2008066927 BookPage: R1456:3612 DateTime: 08/20/2008 12:06:35:880

NOTARY ACKNOWLEDGMENT

STATE OF : Connecticut
: SS. Greenwich
COUNTY OF : Fairfield

On the 21st day of July in the year 2008, before me, a Notary Public in and for the said State, personally appeared Andrew B. Snow, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on this instrument, the person, or the entity upon behalf of which the person acted, executed this instrument.

Melissa Ann Conners
Notary Public
My Commission Expires: October 31, 2010

(NOTARIAL SEAL)

Richland County ROD

John D. Noris

This Document is not to scale

Instrument Number: 2008066927 BookPage: R1456:3613 DateTime: 08/20/2008 12:06:35:880

Richland County ROD

John G. Norris

EXHIBIT A

Legal Description

TRACT 1 (FONTAINE I, 300 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 5, FONTAINE I, CONTAINING 13.60 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 12, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION I BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 386.

TRACT 2 (FONTAINE II, ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 6, FONTAINE II, CONTAINING 9.08 ACRES, MORE OR LESS, ON THE "SUBDIVISION" PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

This Document is not to scale

Richland County ROD

John D. Norris

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 393.

TRACT 3 (FONTAINE III, 200 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 3-A, CONTAINING 0.82 OF AN ACRE, MORE OR LESS, AND LOT 3-B, CONTAINING 3.96 ACRES, MORE OR LESS, FONTAINE III, CONTAINING IN THE AGGREGATE 4.78 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARE BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE III BY METES AND BOUNDS.

TOGETHER WITH, ALSO, NONE EXCLUSIVE PERPETUAL EASEMENTS FOR ACCESS, OVER AND ACROSS THE AREAS IDENTIFIED AS PARCEL "B-1" AND PARCEL "C" ON THE ABOVE-DESCRIBED PLAT AND THE RIGHT OF PEDESTRIAN AND VEHICULAR ACCESS FOR INGRESS, EGRESS AND REGRESS OVER AND ACROSS ALL EXISTING INTERNAL DRIVES WITHIN THE PARKING LOT(S) NOW OR HEREAFTER LOCATED ON THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS PROPERTY, AS SHOWN ON A PLAT RECORDED IN PLAT BOOK 54 AT PAGE 1448, AND AS DESCRIBED IN THE DEED FROM NATIONS BANK OF NORTH CAROLINA, N.A., AS TRUSTEE FOR THE NCNB REAL ESTATE FUND, TO THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS, A DIVISION OF THE STATE OF SOUTH CAROLINA BUDGET AND CONTROL BOARD, DATED JULY 16, 1992 AND RECORDED ON JULY 16, 1992 IN RICHLAND COUNTY ROD DEED BOOK D-1100 AT PAGE 350.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TRACT 4 (FONTAINE V, N/S ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE BEING SHOWN AS LOT 4, FONTAINE V, CONTAINING 2.32 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

This Document is not to scale

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 405.

THIS BEING THE SAME PROPERTY CONVEYED TO FONTAINE BUSINESS PARK, LLC, ET. AL., BY DEED OF AP SOUTHEAST PORTFOLIO PARTNERS, L.P., DATED DECEMBER ___, 2007 AND RECORDED DECEMBER ___, 2007, IN RECORD BOOK _____ AT PAGE ___.

Richland County ROD

John D. Nozzis

This Document is not to scale

Instrument Number: 2008066927 BookPage: R1456:3616 DateTime: 08/20/2008 12:06:35:880

EXHIBIT B
ASSIGNEE

The Royal Bank of Scotland plc
c/o Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attn: Commercial Mortgage Loan Department (Attn.: Andrew Snow)
Telecopier: (203) 422-4775

Richland County ROD
John D. Norris
This Document is not to scale

RB1456/3601

Instrument Number: 2008066926 BookPage: RI456:3601 DateTime: 08/20/2008 12:06:35:740

Return acknowledgment to:

[redacted]
Capitol Services, Inc.
P.O. Box 6300 Albany, NY 12206
800/662-0171

ASSIGNMENT OF MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.
(Assignor)

to

the person or entity described on Exhibit B attached hereto

(Assignee)

Dated: As of May 16, 2008

Property Location: County of Richland
State of South Carolina

DOCUMENT PREPARED BY

Jeanette Bionda, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022

Book 1456-3601
2008066926 08/20/2008 12:06:35:740 Assignment of Mortgage
Fee:$12.00 County Tax: $0.00 State Tax: $0.00
2008066926 Richland W Rodden Richland County RCD

420716CT
31674063.DOC

This Document is not to scale

Instrument Number: 2008066926 BookPage: R1456:3602 DateTime: 08/20/2008 12:06:35:740

Richland County ROD

John G. Norris

ASSIGNMENT OF MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation, whose address is 600 Steamboat Road, Greenwich, Connecticut 06830 ("Assignor"), as the holder of the instrument hereinafter described and for valuable consideration hereby endorses, assigns, sells, transfers and delivers to the person or entity described on Exhibit B attached hereto ("Assignee"), having an address set forth on Exhibit B attached hereto, its successors, participants and assigns, without recourse or warranty, all right, title and interest of Assignor in and to that certain Mortgage, Assignment of Rents and Security Agreement by **FONTAINE BUSINESS PARK, LLC**, a Delaware limited liability company (the "Borrower") in favor of Assignor dated as of December 14, 2007 and recorded on December 18, 2007 in Richland County, South Carolina in Record Book 1384 Page 3723 (as the same have heretofore been amended, modified, restated, supplemented, renewed or extended), securing payment of an Promissory Note dated as of December 20, 2007, in the original principal amount of SIXTEEN MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS ($16,300,000.00) made by the Borrower, payable to the order of Assignor and creating a first lien on the property described in Exhibit A attached hereto and by this reference made a part hereof.

Together with any and all notes and obligations therein described, the debt and claims secured thereby and all sums of money due and to become due thereon, with interest provided for therein, and hereby irrevocably appoints Assignee hereunder its attorney to collect and receive such debt, and to foreclose, enforce and satisfy the foregoing the same as it might or could have done were these presents not executed, but at the cost and expense of Assignee.

Together with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor hereunder possesses or to which Assignor is otherwise entitled as additional security for the payment of the notes and other obligations described herein.

This Assignment shall be governed in all respects by the laws of the State of South Carolina and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE ADDENDUM ON THE FOLLOWING PAGE]

31674063.DOC

This Document is not to scale

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed by its duly authorized officer on this 21st of July, 2008.

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: _____
Name: Andrew B. Snow
Title: Senior Vice President

Richland County ROD

John D. Norris

This Document is not to scale

Instrument Number: 2008066926 BookPage: RI 56:3604 DateTime: 08/20/2008 12:06:35:740

NOTARY ACKNOWLEDGMENT

STATE OF : Connecticut
: SS. Greenwich
COUNTY OF : Fairfield

On the 21st day of July in the year 2008, before me, a Notary Public in and for the said State, personally appeared Andrew B. Snow, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on this instrument, the person, or the entity upon behalf of which the person acted, executed this instrument.

Melissa Ann Conners
Notary Public
My Commission Expires: October 31, 2010

(NOTARIAL SEAL)

Richland County ROD

JOHN D. NORTH

This Document is not to scale

Richland County ROD

John D. Hopkins

EXHIBIT A

Legal Description

TRACT 1 (FONTAINE I, 300 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 5, FONTAINE I, CONTAINING 13.60 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 12, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION I BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 386.

TRACT 2 (FONTAINE II, ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 6, FONTAINE II, CONTAINING 9.08 ACRES, MORE OR LESS, ON THE "SUBDIVISION" PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

This Document is not to scale

Richland County ROD

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 393.

TRACT 3 (FONTAINE III, 200 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 3-A, CONTAINING 0.82 OF AN ACRE, MORE OR LESS, AND LOT 3-B, CONTAINING 3.96 ACRES, MORE OR LESS. FONTAINE III, CONTAINING IN THE AGGREGATE 4.78 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARE BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE III BY METES AND BOUNDS.

TOGETHER WITH, ALSO, NONE EXCLUSIVE PERPETUAL EASEMENTS FOR ACCESS, OVER AND ACROSS THE AREAS IDENTIFIED AS PARCEL "B-1" AND PARCEL "C" ON THE ABOVE-DESCRIBED PLAT AND THE RIGHT OF PEDESTRIAN AND VEHICULAR ACCESS FOR INGRESS, EGRESS AND REGRESS OVER AND ACROSS ALL EXISTING INTERNAL DRIVES WITHIN THE PARKING LOT(S) NOW OR HEREAFTER LOCATED ON THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS PROPERTY, AS SHOWN ON A PLAT RECORDED IN PLAT BOOK 54 AT PAGE 1448, AND AS DESCRIBED IN THE DEED FROM NATIONS BANK OF NORTH CAROLINA, N.A., AS TRUSTEE FOR THE NCNB REAL ESTATE FUND, TO THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS, A DIVISION OF THE STATE OF SOUTH CAROLINA BUDGET AND CONTROL BOARD, DATED JULY 16, 1992 AND RECORDED ON JULY 16, 1992 IN RICHLAND COUNTY ROD DEED BOOK D-1100 AT PAGE 350.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TRACT 4 (FONTAINE V, N/S ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE BEING SHOWN AS LOT 4, FONTAINE V, CONTAINING 2.32 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

Richland County, South Carolina

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 405.

THIS BEING THE SAME PROPERTY CONVEYED TO FONTAINE BUSINESS PARK, LLC, ET. AL., BY DEED OF AP SOUTHEAST PORTFOLIO PARTNERS, L.P., DATED DECEMBER ___, 2007 AND RECORDED DECEMBER ____, 2007, IN RECORD BOOK _____ AT PAGE ___.

Richland County ROD

John D. Norris

This Document is not to scale

Instrument Number: 2008066926 BookPage: R1456:3608 DateTime: 08/20/2008 12:06:35:740

EXHIBIT B
ASSIGNEE

The Royal Bank of Scotland plc
c/o Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attn: Commercial Mortgage Loan Department (Attn.: Andrew Snow)
Telecopier: (203) 422-4775

Richland County ROD

John G. Norris

This Document is not to scale

EXECUTION COPY

ASSIGNMENT AND ASSUMPTION

FOR VALUE RECEIVED, as of April 2, 2009, THE ROYAL BANK OF SCOTLAND PLC, successor-in-interest to Lender (the "Assignor") hereby grants, sells, transfers and assigns unto DRV FONTAINE, LLC, a Maryland limited liability company (the "Assignee") all of Assignor's right, title and interest in, to and under (a) that certain mortgage loan described on Schedule 1 hereto (the "Mortgage Loan"), governed by that certain Loan Agreement (Senior Loan) dated as of December 14, 2007 (the "Loan Agreement"), by and between GREENWICH CAPITAL FINANCIAL PRODUCTS, INC. as lender ("Lender") and FONTAINE BUSINESS PARK, LLC as borrower ("Borrower"), and (b) all causes of action, suits, claims, demands and judgments of any nature or description whatsoever, arising under or relating to the Mortgage Loan, whether now known or unknown. Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Loan Agreement.

1. The Assignee hereby accepts all of Assignor's rights, title and interest in, to and under the Loan Agreement, and assumes and agrees to be bound by and to perform, all of the obligations, covenants and agreements of the Assignor as Lender under the Loan Agreement, arising after the date hereof with respect to the period from and after the date hereof.

2. Except as noted on Schedule 2 attached hereto, Assignor, as of the date hereof, hereby represents and warrants to Assignee that:

(i) Assignor is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it was organized and has the full corporate power, authority and legal right to sell and transfer the Mortgage Loan and to execute, deliver and perform this Assignment and to consummate the transactions contemplated hereby;

(ii) the execution and delivery of this Assignment by Assignor does not, and the performance of, and compliance with, the terms of this Assignment by Assignor, will not conflict with any provision of any law or resolution to which Assignor is subject or violate its organizational documents or conflict with or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the breach of, any agreement or other instrument to which it is a party or that is applicable to Assignor or any of its assets, or any order or decree applicable to Assignor and such execution, delivery and performance will not result in the creation or imposition of any lien on Assignor's assets or properties;

(iii) this Assignment has been duly authorized, executed and delivered by Assignor and this Assignment constitutes a valid and legally

binding obligation of Assignor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and except that the enforcement of rights with respect to indemnification and contribution obligations may be limited by applicable law;

(iv) Assignor has obtained all consents, approvals, authorizations and orders of any courts or governmental agencies or bodies required for the due execution, delivery and performance by Assignor of this Assignment;

(v) immediately prior to the execution and delivery of this Assignment, Assignor was the sole legal and beneficial owner of the Mortgage Loan, free and clear of any lien, pledge, hypothecation, encumbrance, security interest, subparticipation or other adverse interest in the Mortgage Loan;

(vi) Assignor has provided or obtained, as the case may be, all third party notices and consents required to be obtained by Assignor under the Loan Agreement in connection with the transfer of the Mortgage Loan to Assignee;

(vii) attached hereto as Schedule 3 is a complete list of all the documents evidencing and/or securing the Mortgage Loan (the "Mortgage Loan Documents"); true and complete copies of the Mortgage Loan Documents have been delivered to Assignee and the terms of the Mortgage Loan Documents have not been amended or modified except as set forth on Schedule 3;

(viii) to the actual knowledge of the Assignor, there is no (a) material Event of Default existing under the Mortgage Loan or (b) event (other than payments less than 30 days delinquent) that, with the passage of time or with notice and the expiration of any grace or cure period, would and does constitute an Event of Default, which Event of Default, in the case of either (a) or (b), materially and adversely affects the value or use of the Mortgage Loan or the related Mortgaged Property (defined below).

(ix) the proceeds of the Mortgage Loan have been fully disbursed and there is no requirement for future advances;

(x) (a) the Mortgage Loan is not, as of the date hereof, nor has it been since origination (or acquisition, as the case may be), delinquent for thirty (30) or more days and (b) as of the date hereof, the outstanding

principal balance of the Mortgage Loan is the amount set forth on Schedule 1 attached hereto;

(xi) to Assignor's actual knowledge, (a) no release of any property securing the Mortgage Loan (the "Mortgaged Property") has occurred and (b) the Borrower has not made any request for a release of the Mortgaged Property;

(xii) neither the Borrower nor any other party to the Loan Documents has been released from any material obligation under the Loan Documents;

(xiii) to Assignor's actual knowledge there are no actions, suits, claims or other proceedings pending in which the Assignor or any affiliate (a) is subject to any outstanding injunction, judgment, order, decree, ruling, settlement or charge or (b) is a party or subject to, or, to the actual knowledge of the Assignor, is threatened to be made a party or be made subject to any action, suit, proceeding, hearing, or investigation of, in, or before any court, or any arbitrator or other body or administrative agency of any federal, state, local, or foreign jurisdiction that could affect Assignor's legal ability to consummate the transactions contemplated by this Assignment and Assumption in accordance with its terms;

(xiv) Assignor has not dealt with any broker, investment banker, agent or other Person, other than Assignor and its affiliates, that may be entitled to any commission or compensation in connection with the sale of the Mortgage Loan or the consummation of any of the transactions contemplated hereby; and

(xv) Attached hereto as Exhibit A are the most recent reserve and escrow balances with respect to the Mortgage Loan as provided to Assignor by the Servicer (the "Escrow Report") and the Escrow Report is accurate and complete as of the Effective Date.

3. Except as provided herein, the Assignor makes no representation or warranty and assumes no responsibility whatsoever with respect to the Mortgage Loan or the Loan Documents, including, without limitation, (x) the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created in the Mortgaged Property under or in connection with the Mortgage Loan, the Loan Documents or any other instrument or document furnished pursuant thereto, or (y) the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto.

4. Assignee, as of the date hereof, hereby represents and warrants to Assignor that:

(i) Assignee has the full corporate power, authority and legal right to purchase and acquire the Mortgage Loan and to execute, deliver and perform this Assignment;

(ii) the execution and delivery of this Assignment by Assignee does not, and the performance of, and compliance with, the terms of this Assignment by Assignee, will not conflict with any provision of any law or resolution to which Assignee is subject or violate its organizational documents or conflict with or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the breach of, any agreement or other instrument to which it is a party or that is applicable to Assignee or any of its assets, or any order or decree applicable to Assignee and such execution, delivery and performance will not result in the creation or imposition of any lien on Assignee's assets or properties;

(iii) this Assignment has been duly authorized, executed and delivered by Assignee and this Assignment constitutes a valid and legally binding obligation of Assignee enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and except that the enforcement of rights with respect to indemnification and contribution obligations may be limited by applicable law;

(iv) Assignee has obtained all consents, approvals, authorizations and orders of any courts or governmental agencies or bodies required for the due execution, delivery and performance by Assignee of this Assignment;

(v) Assignee has not dealt with any broker, investment banker, agent or other Person, other than the Assignor and its affiliates, that may be entitled to any commission or compensation in connection with the sale of the Mortgage Loan or the consummation of any of the transactions contemplated hereby; and

(vi) the financial records of the Assignee will report the purchase of the Mortgage Loan as a purchase by the Assignee.

5. Assignee, except with respect to the representations and warranties made herein, acknowledges that it has independently and without reliance on Assignor, and based on such documents and information as it has deemed appropriate, made its

own credit analysis and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of the Mortgage Loan it is acquiring herein.

6. Concurrently with execution and delivery of this Assignment and Assumption, Assignor will deliver to Assignee:

(a) the original Promissory Note, duly endorsed to pay to the order of Assignee;

(b) Assignment of Mortgage, Assignment of Rents and Security Agreement in recordable form for recording in the land records of Richland County, South Carolina;

(c) Assignment of Leases and Rents in recordable form for recording in the land records of Richland County, South Carolina;

(d) UCC-3 Transfer Statements with respect to each UCC-1 Financing Statement filed in each jurisdiction with respect to the Mortgage Loan;

(e) the settlement statement reflecting the purchase price for the Mortgage Loan being paid by Assignee, and all adjustments thereto;

(f) the original, if available, or a copy of each other of the Mortgage Loan Documents;

(g) the Assignor's loan and credit file relating to the Mortgage Loan, including without limitation the original of all material hard copy correspondence and electronic messages to and from Borrower or any Guarantor and Assignor or any affiliate, all financial, property condition, appraisal, engineering, environmental and other reports and assessments delivered by Borrower in accordance with the Mortgage Loan Documents, and all third party reports relating to the Property, or the Borrower or any Guarantor in Assignor's possession or control, provided, however, Assignor shall not be required to deliver internal memoranda, internal valuations and other internal records;

(h) notice to the Borrower and each Guarantor, advising Borrower and each Guarantor of the transactions contemplated by this Assignment and Assumption, the name and address for notice purposes of Assignee; and

(i) notice to the servicer which is servicing the Mortgage Loan for Assignor that, effective as of the date hereof, the Assignor is assigning the Mortgage Loan to Assignee, and that, with respect to the Mortgage Loan, Assignee shall not have any obligations to such servicer.

7. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISIONS OF SAID STATE.

8. This Assignment may be signed in any number of counterparts by the parties hereto, all of which taken together shall constitute one and the same instrument.

9. This Assignment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

10. The representations and warranties of Assignor and Assignee shall survive the execution and delivery of this Assignment.

11. Assignor hereby agrees that it will promptly hereafter provide to the Servicer notice of the transfer of the Mortgage Loan to Assignee and the information contemplated by the Loan Agreement.

References herein to "this Assignment" shall mean this Assignment and Assumption.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption to be duly executed and delivered as of the date first above written.

ASSIGNOR:

THE ROYAL BANK OF SCOTLAND PLC,

By: Greenwich Capital Markets, Inc., its agent

By: _____
Name: Kevin Kelley
Title: Vice President

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

ASSIGNEE:

DRV FONTAINE, LLC, a Maryland limited liability company

By: RCC Asset Management Company, LLC, a Maryland limited liability company, Manager

By: _____
Name: Elliot M. Liffman
Title: Manager

SCHEDULE 1

Mortgage Loan	Original Mortgage Loan Principal Balance	Principal Balance of Mortgage Loan as of the Date Hereof	Interest Rate	Monthly Payment Date	Maturity Date
A Mortgage loan in the aggregate principal amount of $16,300,000.00, made pursuant to that certain Loan Agreement (Senior Loan), dated as of December 14, 2007, between Greenwich Capital Financial Products, Inc. and Fontaine Business Park, LLC	$16,300,000.00	$16,300,000.00	6.64%	6th day of each calendar month	January 6, 2018

SCHEDULE 2

EXCEPTIONS TO ASSIGNOR REPRESENTATIONS AND WARRANTIES

NONE

SCHEDULE 3

MORTGAGE LOAN DOCUMENTS

(All documents are dated December 14, 2007 unless otherwise indicated)

1. Loan Agreement by and between Greenwich Capital Financial Products, Inc. ("GCFP") and Fontaine Business Park, LLC ("Borrower").

2. Promissory Note in the principal amount of $16,300,000 made by Borrower in favor of GFCP.

3. Mortgage, Assignment of Leases and Rents and Security Agreement made by Borrower in favor of GCFP.

4. Assignment of Leases and Rents made by Borrower in favor of GCFP.

5. Assignment of Agreements, Licenses, Permits and Contracts made by Borrower in favor of GCFP.

6. Consent and Subordination of Manager made by Fontaine Management, LLC ("Manager"), for the benefit of GCFP, and consented to by Borrower.

7. Guaranty of Recourse Obligations (Sponsor Guaranty) made by US Commercial LLC and Kevin Fitzgerald in favor of GFCP.

8. Guaranty of Recourse Obligations (Additional Guarantor) made by Patricia Pollard in favor of GFCP.

9. Guaranty of Recourse Obligations (Additional Guarantor) made by Frank Accurso in favor of GFCP.

10. Guaranty of Recourse Obligations (Additional Guarantor) made by Fred C. Stolle and Diane S. Stolle in favor of GFCP.

11. Guaranty of Recourse Obligations (Additional Guarantor) made by Z.E. Taheri in favor of GFCP.

12. Guaranty of Recourse Obligations (Additional Guarantor) made by Tero Associates in favor of GFCP.

13. Guaranty of Recourse Obligations (Additional Guarantor) made by Frances Taheri in favor of GFCP.

14. Guaranty of Recourse Obligations (Additional Guarantor) made by Damien Tate and Kelly Tate in favor of GFCP.

15. Guaranty of Recourse Obligations (Additional Guarantor) made by Jean A. Morrison in favor of GFCP.

16. Guaranty of Recourse Obligations (Additional Guarantor) made by Warner Byrum in favor of GFCP.

17. Guaranty of Recourse Obligations (Additional Guarantor) made by Jerry T. Rutledge in favor of GFCP.

18. Guaranty of Recourse Obligations (Additional Guarantor) made by Joan V. Bass in favor of GFCP.

19. Guaranty of Recourse Obligations (Additional Guarantor) made by Joanna B. Bravender in favor of GFCP.

20. Guaranty of Recourse Obligations (Additional Guarantor) made by Jeffrey Weitz in favor of GFCP.

21. Guaranty of Recourse Obligations (Additional Guarantor) made by Mimi Cavagnaro in favor of GFCP.

22. Guaranty of Recourse Obligations (Additional Guarantor) made by Anthony Bowser in favor of GFCP.

23. Guaranty of Recourse Obligations (Additional Guarantor) made by John C. Ellis in favor of GFCP.

24. Guaranty of Recourse Obligations (Additional Guarantor) made by Arnold W. Marque and Johanna Marque in favor of GFCP.

25. Guaranty of Recourse Obligations (Additional Guarantor) made by Joan Bowser in favor of GFCP.

26. Guaranty of Recourse Obligations (Additional Guarantor) made by Marshall G. Bovee and Carmen R. Bovee in favor of GFCP.

27. Guaranty of Recourse Obligations (Additional Guarantor) made by Daniel Hoge Vining, Sr. in favor of GFCP.

28. Guaranty of Recourse Obligations (Additional Guarantor) made by Gene Luken in favor of GFCP.

29. Guaranty of Recourse Obligations (Additional Guarantor) made by Lora L. Perlman in favor of GFCP.

30. Guaranty of Recourse Obligations (Additional Guarantor) made by Zia E. Taheri in favor of GFCP.

31. Guaranty of Recourse Obligations (Additional Guarantor) made by Cobra Hutto Vining in favor of GFCP.

32. Guaranty of Recourse Obligations (Additional Guarantor) made by Frederick E. Hitchcock, Jr. in favor of GFCP.

33. Guaranty of Recourse Obligations (Additional Guarantor) dated January 28, 2008, made by Mildred E. Gray in favor of GFCP.

34. Guaranty of Recourse Obligations (Additional Guarantor) dated January 28, 2008, made by Brian F. and Jessica A. Glasky in favor of GFCP.

35. Guaranty of Recourse Obligations (Additional Guarantor) dated January 28, 2008, made by Mildred E. Gray in favor of GFCP.

36. Guaranty of Recourse Obligations (Additional Guarantor) dated January 28, 2008, made by Thomas and Company, Inc. in favor of GFCP.

37. Guaranty of Recourse Obligations (Additional Guarantor) dated January 28, 2008, made by Robert H. Turnier in favor of GFCP.

38. UCC-1 Financing Statements for each of the entities listed below, naming each as debtor, and naming GFCP, as secured party, filed with the Secretary of State of Delaware:

    a. Fontaine Business Park, LLC
    b. Fontaine Business Park 2, LLC
    c. Fontaine Business Park 3, LLC
    d. Fontaine Business Park 4, LLC
    e. Fontaine Business Park 5, LLC
    f. Fontaine Business Park 6, LLC
    g. Fontaine Business Park 7, LLC
    h. Fontaine Business Park 8, LLC
    i. Fontaine Business Park 9, LLC
    j. Fontaine Business Park 10, LLC
    k. Fontaine Business Park 11, LLC
    l. Fontaine Business Park 12, LLC
    m. Fontaine Business Park 13, LLC
    n. Fontaine Business Park 14, LLC
    o. Fontaine Business Park 15, LLC
    p. Fontaine Business Park 16, LLC
    q. Fontaine Business Park 17, LLC
    r. Fontaine Business Park 18, LLC

s. Fontaine Business Park 19, LLC
t. Fontaine Business Park 20, LLC
u. Fontaine Business Park 21, LLC
v. Fontaine Business Park 22, LLC
w. Fontaine Business Park 23, LLC
x. Fontaine Business Park 24, LLC
y. Fontaine Business Park 25, LLC
z. Fontaine Business Park 26, LLC
aa. Fontaine Business Park 27, LLC
bb. Fontaine Business Park 28, LLC
cc. Fontaine Business Park 29, LLC
dd. Fontaine Business Park 30, LLC
ee. Fontaine Business Park 31, LLC

39. UCC-1 Financing Statements for each of the entities listed below, naming each as debtor, and naming GFCP, as secured party, filed with the Richland County Register of Deeds:

a. Fontaine Business Park, LLC
b. Fontaine Business Park 2, LLC
c. Fontaine Business Park 3, LLC
d. Fontaine Business Park 4, LLC
e. Fontaine Business Park 5, LLC
f. Fontaine Business Park 6, LLC
g. Fontaine Business Park 7, LLC
h. Fontaine Business Park 8, LLC
i. Fontaine Business Park 9, LLC
j. Fontaine Business Park 10, LLC
k. Fontaine Business Park 11, LLC
l. Fontaine Business Park 12, LLC
m. Fontaine Business Park 13, LLC
n. Fontaine Business Park 14, LLC
o. Fontaine Business Park 15, LLC
p. Fontaine Business Park 16, LLC
q. Fontaine Business Park 17, LLC
r. Fontaine Business Park 18, LLC
s. Fontaine Business Park 19, LLC
t. Fontaine Business Park 20, LLC
u. Fontaine Business Park 21, LLC
v. Fontaine Business Park 22, LLC
w. Fontaine Business Park 23, LLC
x. Fontaine Business Park 24, LLC
y. Fontaine Business Park 25, LLC
z. Fontaine Business Park 26, LLC
aa. Fontaine Business Park 27, LLC
bb. Fontaine Business Park 28, LLC

cc. Fontaine Business Park 29, LLC
dd. Fontaine Business Park 30, LLC
ee. Fontaine Business Park 31, LLC

40. Loan Assumption Agreement by and among Borrower, GFCP, Kevin Fitzgerald, US Commercial LLC and the following entities:

a. Fontaine Business Park 2, LLC
b. Fontaine Business Park 3, LLC
c. Fontaine Business Park 4, LLC
d. Fontaine Business Park 5, LLC
e. Fontaine Business Park 6, LLC
f. Fontaine Business Park 7, LLC
g. Fontaine Business Park 8, LLC
h. Fontaine Business Park 9, LLC
i. Fontaine Business Park 10, LLC
j. Fontaine Business Park 11, LLC
k. Fontaine Business Park 12, LLC
l. Fontaine Business Park 13, LLC
m. Fontaine Business Park 14, LLC
n. Fontaine Business Park 15, LLC
o. Fontaine Business Park 16, LLC
p. Fontaine Business Park 17, LLC
q. Fontaine Business Park 18, LLC
r. Fontaine Business Park 19, LLC
s. Fontaine Business Park 20, LLC
t. Fontaine Business Park 21, LLC
u. Fontaine Business Park 22, LLC
v. Fontaine Business Park 23, LLC
w. Fontaine Business Park 24, LLC
x. Fontaine Business Park 26, LLC
y. Fontaine Business Park 28, LLC

41. First Amendment to Loan Assumption Agreement dated January 28, 2008, by and among Borrower, GFCP, Kevin Fitzgerald and the following entities:

a. Fontaine Business Park 25, LLC
b. Fontaine Business Park 27, LLC
c. Fontaine Business Park 29, LLC
d. Fontaine Business Park 30, LLC
e. Fontaine Business Park 31, LLC

42. Allonge to Promissory Note dated May 16, 2008, by GFCP, in favor of The Royal Bank of Scotland PLC ("RBS").

43. Assignment and Assumption of Loan and Related Loan Documents dated May 16, 2008, by and between GCFP and RBS.

44. Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated July 21, 2008, made by GCFP, in favor of RBS.

45. Assignment of Assignment of Leases and Rents dated July 21, 2008, made by GFCP in favor of RBS.

46. UCC-3 Financing Statement for each of the entities listed below, naming RBS as secured party, filed with the Secretary of State of Delaware:

a. Fontaine Business Park, LLC
b. Fontaine Business Park 2, LLC
c. Fontaine Business Park 3, LLC
d. Fontaine Business Park 4, LLC
e. Fontaine Business Park 5, LLC
f. Fontaine Business Park 6, LLC
g. Fontaine Business Park 7, LLC
h. Fontaine Business Park 8, LLC
i. Fontaine Business Park 9, LLC
j. Fontaine Business Park 10, LLC
k. Fontaine Business Park 11, LLC
l. Fontaine Business Park 12, LLC
m. Fontaine Business Park 13, LLC
n. Fontaine Business Park 14, LLC
o. Fontaine Business Park 15, LLC
p. Fontaine Business Park 16, LLC
q. Fontaine Business Park 17, LLC
r. Fontaine Business Park 18, LLC
s. Fontaine Business Park 19, LLC
t. Fontaine Business Park 20, LLC
u. Fontaine Business Park 21, LLC
v. Fontaine Business Park 22, LLC
w. Fontaine Business Park 23, LLC
x. Fontaine Business Park 24, LLC
y. Fontaine Business Park 25, LLC
z. Fontaine Business Park 26, LLC
aa. Fontaine Business Park 27, LLC
bb. Fontaine Business Park 28, LLC
cc. Fontaine Business Park 29, LLC
dd. Fontaine Business Park 30, LLC
ee. Fontaine Business Park 31, LLC

47. UCC-3 Financing Statement for each of the entities listed below, naming RBS as secured party, filed with the Richland County Register of Deeds:

a. Fontaine Business Park, LLC
b. Fontaine Business Park 2, LLC
c. Fontaine Business Park 3, LLC
d. Fontaine Business Park 4, LLC
e. Fontaine Business Park 5, LLC
f. Fontaine Business Park 6, LLC
g. Fontaine Business Park 7, LLC
h. Fontaine Business Park 8, LLC
i. Fontaine Business Park 9, LLC
j. Fontaine Business Park 10, LLC
k. Fontaine Business Park 11, LLC
l. Fontaine Business Park 12, LLC
m. Fontaine Business Park 13, LLC
n. Fontaine Business Park 14, LLC
o. Fontaine Business Park 15, LLC
p. Fontaine Business Park 16, LLC
q. Fontaine Business Park 17, LLC
r. Fontaine Business Park 18, LLC
s. Fontaine Business Park 19, LLC
t. Fontaine Business Park 20, LLC
u. Fontaine Business Park 21, LLC
v. Fontaine Business Park 22, LLC
w. Fontaine Business Park 23, LLC
x. Fontaine Business Park 24, LLC
y. Fontaine Business Park 25, LLC
z. Fontaine Business Park 26, LLC
aa. Fontaine Business Park 27, LLC
bb. Fontaine Business Park 28, LLC
cc. Fontaine Business Park 29, LLC
dd. Fontaine Business Park 30, LLC
ee. Fontaine Business Park 31, LLC

48. Subordination, Non-Disturbance and Attornment Agreement (Mortgage) dated _____, 2007, by and among GCFP, A.P. Southeast Portfolio Partners, L.P., and Staples, Inc (not executed by A.P. Southeast Portfolio Partners, L.P).

49. Tenant Estoppel Certificate dated December 12, 2007, by Staples, Inc., for the benefit of Borrower and GCFP.

50. Subordination, Non-Disturbance and Attornment Agreement dated December 6, 2007, by and between GCFP and Xerox Corporation.

51. Estoppel Certificate dated _____ __, ____, by Xerox Corporation, for the benefit of Borrower and GCFP.

52. Tenant Estoppel Certificate and Mutual Recognition Agreement dated December __, 2007, by and among Honeywell International Inc., Borrower, and GCFP.

53. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among Aetna Life Insurance Company, Borrower, and GCFP.

54. Tenant Certificate and Mutual Recognition Agreement dated December 5, 2007, by and among Clean Harbors Environmental Services Inc., Borrower, and GCFP (not executed by Borrower).

55. Tenant Certificate and Mutual Recognition Agreement dated December 10, 2007, by and among Telcove Operations, LLC, Borrower, and GCFP.

56. Tenant Certificate and Mutual Recognition Agreement dated December 5, 2007, by and among Patterson Dental Supply, Inc., Borrower, and GCFP.

57. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among TBE Group, Inc., Borrower, and GCFP.

58. Tenant Certificate and Mutual Recognition Agreement dated December 10, 2007, by and among Ometric Corporation, Borrower, and GCFP.

59. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among First-Citizens Bank & Trust Company, Borrower, and GCFP.

60. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among Limestone College, Borrower, and GCFP.

61. Tenant Certificate and Mutual Recognition Agreement dated December 4, 2007, by and among Biotel, Inc., Borrower, and GCFP.

62. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among Fox Meadows Software Ltd., Borrower, and GCFP.

63. Tenant Certificate and Mutual Recognition Agreement dated November 30, 2007, by and among Allen, Kopet & Associates, PLLC, Borrower, and GCFP.

64. Tenant Certificate and Mutual Recognition Agreement dated _____ __, 2007, by and among South Carolina Retirement Investment Commission, Borrower, and GCFP.

65. Tenant Certificate and Mutual Recognition Agreement dated December 4, 2007, by and among Citistreet, LLC, Borrower, and GCFP.

66. Department of the Army Informational Letter dated November 30, 2007.

67. Opinion of Connolly Bove Lodge & Hutz LLP, as special Delaware counsel to Borrower and Added Borrowers (as defined therein), dated December __, 2007.

68. Bankruptcy Opinion of Connolly Bove Lodge & Hutz LLP, as special Delaware counsel to Borrower and Added Borrowers (as defined therein), dated December __, 2007.

69. Opinion of Powell Goldstein LLP, as counsel to Borrower, US Commercial LLC and Kevin Fitzgerald.

70. Opinion of Powell Goldstein LLP, as special local counsel to the borrowers and guarantors named therein.

71. Survey by Bock and Clark, dated October 17, 2007, date of last revision November 19, 2007.

72. Borrower Certificate Regarding Limited Liability Company Operating Agreement and Consents.

73. Manager Certificate Regarding Limited Liability Company Operating Agreement and Consents.

74. U.S. Commercial LLC Certificate Regarding Limited Liability Company Operating Agreement and Consents.

75. U.S. Advisor, LLC Certificate Regarding Limited Liability Company Operating Agreement and Consents.

EXHIBIT A

ESCROW AND RESERVE ACCOUNT BALANCES

Real Estate Taxes:	$92,352.48
Insurance:	$6,382.71
Replacements:	$28,040.24
Deferred Maintenance:	$1.55
Rollover:	$597,348.31
Leasing Commissions:	$47,915.82

Book 1509-641
2009024205 04/02/2009 18 45 18 392 Asgmt Lease Rent Profit
Fee:$9.00 County Tax:$0 00 State Tax:$0.00



2009024205 Richard W. Rodden Richland County R O D

RECORDING REQUESTED BY
AND WHEN RECORDED PLEASE
RETURN TO:

DRV Fontaine, LLC
c/o Diversified Realty Ventures, LLC
8218 Wisconsin Avenue, Suite 209
Bethesda, MD 20814
Attention: Elliot M. Liffman

ASSIGNMENT OF
ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS (the "Assignment") is made as of the 2nd day of April, 2009, by THE ROYAL BANK OF SCOTLAND PLC ("Assignor"), to DRV FONTAINE, LLC, a Maryland limited liability company ("Assignee").

For good and sufficient consideration the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor hereby sells, assigns, transfers, and endorses to Assignee, its successors and assigns, without recourse, representation or warranty (express or implied), all its right, title and interest in and to that certain Assignment of Leases and Rents, dated as of December 14, 2007, made by FONTAINE BUSINESS PARK, LLC, a Delaware limited liability company ("Borrower"), and recorded on December 18, 2007 as Record Book 1384 Page 3744 of the Office of the Richland County, South Carolina Register of Deeds ("Clerk"), as assigned by GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation ("Lender"), to Assignor pursuant to that certain Assignment of Assignment of Leases and Rents given by Lender to Assignor, dated as of July 21, 2008, and recorded with the Clerk on August 20, 2008 as Record Book 1456 Page 3609 (the "Assignment of Leases"), which Assignment of Leases was delivered with respect to that certain Promissory Note dated December 14, 2007, given by Borrower, in favor of Lender.

Prior to the execution hereof, Assignor has not sold, transferred, assigned, conveyed, pledged or endorsed, any right, title or interest in the Assignment of Leases, and Assignor has full right, power and authority to sell and assign the Assignment of Leases to Assignee.

TO HAVE AND TO HOLD the Assignment of Leases unto Assignee and to the successors and assigns of Assignee forever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be executed in its name by its duly authorized officer as of the date first above written.

ASSIGNOR:

THE ROYAL BANK OF SCOTLAND PLC

By: Greenwich Capital Markets, Inc., its agent

Witness No. 1

Witness No. 2

By: _____

Name: Kevin Kelley

Title: Vice President

ACKNOWLEDGMENT

STATE OF Connecticut)
) ss.:
COUNTY OF Fairfield)

Before me, the undersigned Notary Public, in and for said state, personally appeared Kevin Keller, personally known to me to be the Vice President of Greenwich Capital Markets, Inc., agent for The Royal Bank of Scotland PLC, who executed the foregoing instrument on behalf of The Royal Bank of Scotland PLC this 27 day of March 2009 and acknowledged that he/she executed the same.

Jennifer Ganino (SEAL)
Notary Public for _____
My Commission Expires: JENNIFER GANINO
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2011

RECORDING REQUESTED BY
AND WHEN RECORDED PLEASE
RETURN TO:

DRV Fontaine, LLC
c/o Diversified Realty Ventures, LLC
8218 Wisconsin Avenue, Suite 209
Bethesda, MD 20814
Attention: Elliot M. Liffman

Book 1509-635
2009024204 04/02/2009 16:45:18:310
Fee:$11.00 County Tax:$0.00
Assignment of Mortgage
State Tax:$0.00



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

This Assignment of Mortgage, Assignment of Rents and Security Agreement (this "Assignment"), is made as of the 2nd day of April, 2009, by THE ROYAL BANK OF SCOTLAND PLC ("Assignor"), to DRV FONTAINE, LLC, a Maryland limited liability company ("Assignee").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee:

Assignor's right, title and interest in, to and under that certain Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") given by FONTAINE BUSINESS PARK, LLC, a Delaware limited liability company ("Borrower"), as borrower, to GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware

corporation ("Lender"), as lender, dated as of December 14, 2007, and recorded on December 17, 2007 as Record Book 1384 Page 3723 in the Office of the Richland County, South Carolina Register of Deeds ("Clerk"), as assigned by Lender to Assignor pursuant to that certain Assignment of Mortgage, Assignment of Rents and Security Agreement given by Lender to Assignor, dated as of July 21, 2008, and recorded with the Clerk on August 20, 2008 as Book 1456 Page 3601;

Prior to the execution hereof, Assignor has not sold, transferred, assigned, conveyed, pledged or endorsed, any right, title or interest in the Mortgage, and Assignor has full right, power and authority to sell and assign the Mortgage to Assignee.

TOGETHER WITH the note or notes described or referred to in the Mortgage, the money due and to become due thereon with interest, and all rights accrued or to accrue under the Mortgage;

This Assignment is made by Assignor without recourse, representation or warranty (express or implied).

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever.

The Mortgage encumbers, among other things, the property described on Exhibit A annexed hereto and made a part hereof, together with the buildings and improvements erected thereon.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of the day and year first written above.

ASSIGNOR:

THE ROYAL BANK OF SCOTLAND PLC

By: Greenwich Capital Markets, Inc., its agent

Witness No. 1

Witness No. 2

By: _____
Name:
Title: Kevin Kelley
Vice President

ACKNOWLEDGMENT

STATE OF Connecticut)
) ss.:
COUNTY OF Fairfield)

Before me, the undersigned Notary Public, in and for said state, personally appeared Kevin Kelley, personally known to me to be the Vice President of Greenwich Capital Markets, Inc., agent for The Royal Bank of Scotland PLC, who executed the foregoing instrument on behalf of The Royal Bank of Scotland PLC this 21 day of March 2009 and acknowledged that he/she executed the same.

Jennifer Ganino (SEAL)
Notary Public for State of Connecticut
My Commission Expires: JENNIFER GANINO
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2011

EXHIBIT A

Legal Description

TRACT 1 (FONTAINE I, 300 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 5, FONTAINE I, CONTAINING 13.60 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 12, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION I BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 386.

TRACT 2 (FONTAINE II, ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 6, FONTAINE II, CONTAINING 9.08 ACRES, MORE OR LESS, ON THE "SUBDIVISION" PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30, AS AMENDED IN DEED BOOK D-1171 AT PAGE 350, AND AS FURTHER AMENDED IN DEED BOOK D-1187 AT PAGE 550.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 393.

TRACT 3 (FONTAINE III, 200 ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE, BEING SHOWN AS LOT 3-A, CONTAINING 0.82 OF AN ACRE, MORE OR LESS, AND LOT 3-B, CONTAINING 3.96 ACRES, MORE OR LESS. FONTAINE III, CONTAINING IN THE AGGREGATE 4.78 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARE BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE III BY METES AND BOUNDS.

TOGETHER WITH, ALSO, NONE EXCLUSIVE PERPETUAL EASEMENTS FOR ACCESS, OVER AND ACROSS THE AREAS IDENTIFIED AS PARCEL "B-1" AND PARCEL "C" ON THE ABOVE-DESCRIBED PLAT AND THE RIGHT OF PEDESTRIAN AND VEHICULAR ACCESS FOR INGRESS, EGRESS AND REGRESS OVER AND ACROSS ALL EXISTING INTERNAL DRIVES WITHIN THE PARKING LOT(S) NOW OR HEREAFTER LOCATED ON THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS PROPERTY, AS SHOWN ON A PLAT RECORDED IN PLAT BOOK 54 AT PAGE 1448, AND AS DESCRIBED IN THE DEED FROM NATIONS BANK OF NORTH CAROLINA, N.A., AS TRUSTEE FOR THE NCNB REAL ESTATE FUND, TO THE STATE OF SOUTH CAROLINA RETIREMENT SYSTEMS, A DIVISION OF THE STATE OF SOUTH CAROLINA BUDGET AND CONTROL BOARD, DATED JULY 16, 1992 AND RECORDED ON JULY 16, 1992 IN RICHLAND COUNTY ROD DEED BOOK D-1100 AT PAGE 350.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350,

TRACT 4 (FONTAINE V, N/S ARBOR LAKE DRIVE):

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND (THE "FEE SIMPLE PARCEL") LYING AND BEING SITUATE IN RICHLAND COUNTY, SOUTH CAROLINA, ON ARBOR LAKE DRIVE BEING SHOWN AS LOT 4, FONTAINE V, CONTAINING 2.32 ACRES, MORE OR LESS, ON THE "SUBDIVISION PLAT OF FONTAINE BUSINESS CENTER" PREPARED BY W.K. DICKSON ENGINEERS, PLANNERS AND SURVEYORS, DATED SEPTEMBER 21, 1993 AND RECORDED ON NOVEMBER 1, 1993 IN RICHLAND COUNTY ROD PLAT BOOK 54 AT PAGE 9112, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF FONTAINE II BY METES AND BOUNDS.

TOGETHER WITH ALL APPURTENANT EASEMENT RIGHTS AS SET FORTH IN DECLARATION OF EASEMENT, COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTAINE BUSINESS CENTER RECORDED IN RICHLAND COUNTY ROD DEED BOOK D-1096 AT PAGE 30 AND AMENDED IN DEED BOOK D-1171 AT PAGE 350.

TOGETHER WITH AN APPURTENANT AND RESERVED NON-EXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AS SET FORTH IN DEED DATED NOVEMBER 22, 1993 AND RECORDED ON NOVEMBER 24, 1993 IN RICHLAND COUNTY ROD DEED BOOK D-1171 AT PAGE 405.

THIS BEING THE SAME PROPERTY CONVEYED TO FONTAINE BUSINESS PARK, LLC, ET AL., BY DEED OF AP SOUTHEAST PORTFOLIO PARTNERS, L.P. DATED DECEMBER 12, 2007 AND RECORDED DECEMBER 18, 2007 IN RICHLAND COUNTY ROD RECORD BOOK 1384 AT PAGE 3712 AND BEING THE SAME PROPERTY CONVEYED TO FONTAINE BUSINESS PARK 25, LLC, FONTAINE BUSINESS PARK 27, LLC, FONTAINE BUSINESS PARK 29, LLC, FONTAINE BUSINESS PARK 30, LLC, AND FONTAINE BUSINESS PARK 31, LLC, BY DEED OF FONTAINE BUSINESS PARK, LLC DATED JANUARY 28, 2008 AND RECORDED FEBRUARY 8, 2008 IN RICHLAND COUNTY ROD RECORD BOOK 1399 AT PAGE 3198.

TMS Nos. 14207-02-01
14207-02-02
14203-13-02
14203-18-01

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC, *Plaintiff,*	)	ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
v.	)	
FONTAINE BUSINESS PARK, LLC, *et al.* *Defendants.*	)	Jury Trial Demanded as to Counterclaims Pursuant to Rule 53, SCRCP

RICHLAND COUNTY
FILED
2012 DEC -3 PM 2:07
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Defendant Fontaine Business Park, LLC, ("Fontaine") submits the following Answer, Defenses, and Counterclaims in response to the Complaint filed by Plaintiff DRV Fontaine, LLC ("DRV").

ANSWER

1. Fontaine denies each allegation of the Complaint generally unless otherwise admitted, qualified, or explained. More particularly, Fontaine denies that any Events of Default have occurred under the applicable Loan Documents. Fontaine avers that all payments due under the applicable Loan Documents were current as of the date of the Complaint.

2. Fontaine admits the allegations in Paragraphs 1 through 32 concerning the parties herein.

3. Fontaine admits the allegations in Paragraph 33 concerning the situs of the Real Property and venue herein.

4. Fontaine admits the allegations of personal jurisdiction and subject matter jurisdiction in Paragraph 34.

5. Fontaine incorporates and re-alleges its responses in Paragraphs 1 through 4 in response to the allegation of Paragraph 35.

COPY

6. Fontaine admits the allegations of Paragraph 36.

7. Fontaine admits the allegation of Paragraph 37 that a Loan Agreement was executed and delivered to Greenwich Capital. Fontaine avers that the Loan Agreement speaks for itself and craves reference to the Loan Agreement for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 37 to the extent that the allegations are inconsistent with the terms of the Loan Agreement.

8. Fontaine avers that Paragraph 38 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 38.

9. Fontaine admits the allegations of Paragraph 39 to the extent that the allegations are consistent with the Loan Agreement. Fontaine avers that the Loan Agreement speaks for itself, and craves reference to the Loan Agreement for a precise statement of its terms and obligations. To the extent the allegations of Paragraph 39 are inconsistent with the terms of the Loan Agreement, Fontaine denies the allegations.

10. Fontaine admits the allegations of Paragraph 40 to the extent that the allegations are consistent with the Loan Agreement. Fontaine avers that the Loan Agreement speaks for itself, and craves reference to the Loan Agreement for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 40 to the extent the allegations are inconsistent with the terms of the Loan Agreement.

11. Fontaine admits the allegation of Paragraph 41 that a Promissory Note was executed and delivered to Greenwich Capital. Fontaine avers that the Promissory Note speaks for itself and craves reference to the Promissory Note for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 41 to the extent that the allegations are inconsistent with the terms of the Promissory Note.

12. Fontaine avers that Paragraph 42 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 42.

13. Fontaine admits that a document similar to that described in Paragraph 43 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 43 as is consistent with the Mortgage, which speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 43 to the extent the allegations are inconsistent with the terms of the Mortgage.

14. Fontaine avers that Paragraph 44 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 44.

15. Fontaine admits the allegations of Paragraph 45 to the extent the allegations are consistent with the Mortgage. Fontaine avers that the Mortgage speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegation of Paragraph 45 to the extent the allegations are inconsistent with the terms of the Mortgage.

16. Fontaine admits the allegations of Paragraph 46 to the extent that the allegations are consistent with the Mortgage. Fontaine avers that the Mortgage which speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 46 to the extent the allegations are inconsistent with the terms of the Mortgage.

17. Fontaine admits the allegations of Paragraph 47 to the extent that the allegations are consistent with the Mortgage, applicable law, and other claims of record. Fontaine avers that the Mortgage speaks for itself, and craves reference to the Mortgage for a precise statement of its terms

and obligations. Fontaine denies the allegations of Paragraph 47 to the extent the allegations are inconsistent with the terms of the Mortgage, applicable law, and other claims of record.

18. Fontaine admits the allegations of Paragraph 48 to the extent that the allegations are consistent with the Mortgage. Fontaine avers that the Mortgage speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 48 to the extent the allegations are inconsistent with the terms of the Mortgage.

19. Fontaine avers that Paragraph 49 is definitional and does not contain any allegations to which a response is required. Moreover, Fontaine admits only so much of Paragraph 49 as is consistent with the Mortgage, which speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 49 to the extent the allegations are inconsistent with the terms of the Mortgage.

20. Fontaine avers that Paragraph 50 is definitional and does not contain any allegations to which a response is required. Moreover Fontaine admits only so much of Paragraph 50 as is consistent with the Mortgage, which speaks for itself, and craves reference to the Mortgage for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 50 to the extent the allegations are inconsistent with the terms of the Mortgage.

21. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 51 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist (none of which are apparently attached as Exhibits to the Complaint), Fontaine craves reference to the same for a precise statement of their terms and obligations. Finally, to the extent such UCC financing statements do not exist, or cannot be produced, then any claimed security interest would be null and void.

22. Fontaine admits that a document similar to that described in Paragraph 52 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 52 as is consistent with the Assignment of Leases and Rents, which speaks for itself, and craves reference to the Assignment of Leases and Rents for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 52 to the extent the allegations are inconsistent with the terms of the Assignment of Leases and Rents.

23. Fontaine avers that Paragraph 53 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 53.

24. Fontaine admits the allegation of Paragraph 54 that an Assignment of Agreements, Licenses, Permits and Contracts was executed and delivered to Greenwich Capital. Fontaine avers that the Assignment of Agreements speaks for itself and craves reference to the Assignment of Agreements for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 54 to the extent that the allegations are inconsistent with the terms of the Assignment of Agreements.

25. Fontaine avers that Paragraph 55 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 55.

26. Fontaine admits the allegations of Paragraph 56 to the extent that the allegations are consistent with the Assignment of Agreements. Fontaine avers that the Assignment of Agreements speaks for itself, and craves reference to the Assignment of Agreements for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 56 to the extent the allegations are inconsistent with the terms of the Assignment of Agreements.

27. Fontaine admits the allegation of Paragraph 57 that a Loan Assumption Agreement was executed and delivered to Greenwich Capital. Fontaine avers that the Loan Assumption Agreement speaks for itself and craves reference to the Loan Assumption Agreement for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 57 to the extent that the allegations are inconsistent with the terms of the Loan Assumption Agreement.

28. Fontaine admits that a document similar to that described in Paragraph 58 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 58 as is consistent with the Loan Assumption Agreement, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 58 to the extent the allegations are inconsistent with the terms of the Loan Assumption Agreement.

29. Fontaine avers that Paragraph 59 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 59.

30. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 60 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist (none of which are apparently attached as Exhibits to the Complaint), Fontaine craves reference to the same for a precise statement of their terms and obligations. Finally, to the extent such UCC financing statements do not exist, or cannot be produced, then any claimed security interest would be null and void.

31. Fontaine admits the allegation of Paragraph 61 that a Guaranty of Recourse Obligations ("Guaranty 1") was executed and delivered to Greenwich Capital. Fontaine avers that Guaranty 1 speaks for itself and craves reference to Guaranty 1 for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 61 to the extent that the allegations are inconsistent with the terms of the Guaranty 1.

32. Fontaine avers that Paragraph 62 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 62.

33. Fontaine admits the allegation of Paragraph 63 that a second Guaranty of Recourse Obligations ("Guaranty 2") was executed and delivered to Greenwich Capital. Fontaine avers that Guaranty 2 speaks for itself and craves reference to Guaranty 2 for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 63 to the extent that the allegations are inconsistent with the terms of Guaranty 2.

34. Fontaine avers that Paragraph 64 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 64.

35. Fontaine admits the allegation of Paragraph 65 that an Amendment to Loan Assumption Agreement was executed and delivered to Greenwich Capital. Fontaine avers that the Amendment speaks for itself, and craves reference to the Amendment for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 65 to the extent that the allegations are inconsistent with the terms of the Amendment.

36. Fontaine admits that a document similar to that described in Paragraph 66 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 66 as is consistent with the Amendment to Loan Assumption Agreement, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 66 to the extent the allegations are inconsistent with the terms of the Amendment to Loan Assumption Agreement.

37. Fontaine avers that Paragraph 67 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 67.

38. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 68 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist (none of which are apparently attached as Exhibits to the Complaint), Fontaine craves reference to the same for a precise statement of their terms and obligations. Finally, to the extent such UCC financing statements do not exist, or cannot be produced, then any claimed security interest would be null and void.

39. Fontaine admits the allegation of Paragraph 69 that a third Guaranty of Recourse Obligations ("Guaranty 3") was executed and delivered to Greenwich Capital. Fontaine avers that Guaranty 3 speaks for itself and craves reference to Guaranty 3 for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 69 to the extent that the allegations are inconsistent with the terms of Guaranty 3.

40. Fontaine avers that Paragraph 70 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 70.

41. Fontaine avers that Paragraph 71 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 71.

42. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 72 and, therefore, denies the allegations. Moreover, Fontaine craves reference to any document purporting to memorialize such an assignment for a precise statement of its terms and obligations. To the extent no such proper

document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

43. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 73 and, therefore, denies the allegations. Fontaine avers that to the extent such an Allonge exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

44. Fontaine avers that Paragraph 74 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 74.

45. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 75 and, therefore, denies the allegations. Fontaine avers that to the extent such an Assignment and Assumption of Loan and Related Documents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

46. Fontaine avers that Paragraph 76 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 76.

47. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 77 and, therefore, denies the allegations. Fontaine avers that to the extent such an Assignment of Assignment of Leases and Rents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and

obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

48. Fontaine admits that a document similar to that described in Paragraph 78 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 78 as is consistent with the Assignment of Assignment of Leases, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 78 to the extent the allegations are inconsistent with the terms of the Assignment of Assignment of Leases.

49. Fontaine avers that Paragraph 79 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 79.

50. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 80 and, therefore, denies the allegations. Fontaine avers that, to the extent such an Assignment of Mortgage, Assignment of Rents and Security Agreement exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

51. Fontaine admits that a document similar to that described in Paragraph 81 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 81 as is consistent with the Assignment of Mortgage, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 81 to the extent the allegations are inconsistent with the terms of the Assignment of Mortgage.

52. Fontaine avers that Paragraph 82 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 82.

53. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 83 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist (none of which are apparently attached as Exhibits to the Complaint), Fontaine craves reference to the same for a precise statement of their terms and obligations. Finally, to the extent such UCC financing statements do not exist, or cannot be produced, then any claimed security interest would be null and void.

54. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 84 and, therefore, denies the allegations. Moreover, Fontaine craves reference to any document purporting to memorialize such an assignment for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

55. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 85 and, therefore, denies the allegations. Fontaine avers that to the extent such an Allonge exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred. Fontaine avers that the second sentence of Paragraph 85 is definitional and does not make any allegation to which a response is required.

56. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 86 and, therefore, denies the allegations.

Fontaine avers that to the extent such an Assignment and Assumption exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

57. Fontaine avers that Paragraph 87 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 87.

58. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 88 and, therefore, denies the allegations. Fontaine avers that to the extent such an Assignment of Assignment of Leases and Rents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

59. Fontaine admits that a document similar to that described in Paragraph 89 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 89 as is consistent with the Assignment of Assignment of Leases, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 89 to the extent the allegations are inconsistent with the terms of the Assignment of Assignment of Leases.

60. Fontaine avers that Paragraph 90 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 90.

61. Fontaine does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 91 and, therefore, denies the allegations.

Fontaine avers that to the extent such an Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, Fontaine denies the efficacy of the contemplated assignment, or that it ever occurred.

62. Fontaine admits that a document similar to that described in Paragraph 92 is of record as stated. Moreover, Fontaine admits only so much of Paragraph 92 as is consistent with the Assignment of Mortgage, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 92 to the extent the allegations are inconsistent with the terms of the Assignment of Mortgage.

63. Fontaine avers that Paragraph 93 is definitional and does not contain any allegation to which a response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 93.

64. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 94 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist (none of which are apparently attached as Exhibits to the Complaint), Fontaine craves reference to the same for a precise statement of their terms and obligations. Finally, to the extent such UCC financing statements do not exist, or cannot be produced, then any claimed security interest would be null and void.

65. Fontaine admits the allegations of Paragraph 95 to the extent that the allegations are consistent with the Loan Agreement, which speaks for itself, and craves reference to the Loan Agreement for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 95 to the extent that they are inconsistent with the Loan Agreement.

66. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 96 and, therefore, denies the allegations.

67. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 97 and, therefore, denies the allegations.

68. Fontaine admits the allegation of Paragraph 98 that CB Richard Ellis, the third-party property manager, provided a document to DRV concerning potential capital expenditures related to the applicable Real Property. Fontaine denies that the document was Fontaine's Capital Budget or the Capital Budget for the applicable Real Property. Moreover, Fontaine avers that 95% of the potential capital expenditures never came to fruition, and it was immediately apparent to DRV that the Capital Budget from CB Richard Ellis needed to be adjusted. Fontaine denies the remaining allegations of Paragraph 98.

69. Fontaine admits the allegation of Paragraph 99 that, on July 11, 2011, DRV arbitrarily and capriciously increased Fontaine's monthly contributions to the Capital Reserve and Rollover Reserve Accounts, resulting in one-time increases related to the applicable monthly payments of 1,037% and 756%, respectively. Fontaine denies that the increases were implemented to cure projected "shortfalls" in Fontaine's Capital Budget or the Capital Budget for the Real Property. Fontaine denies that the document provided by CB Richard Ellis to DRV was Fontaine's Capital Budget or the Capital Budget for the applicable Real Property. Fontaine avers that the document provided by CB Richard Ellis to DRV was not prepared to determine whether the Reserve Accounts were sufficiently funded. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the basis for DRV's decision to exponentially and unreasonably increase the Reserve Accounts. Fontaine avers that it has requested DRV's underwriting guidelines and other information used by DRV to inform its reassessment process, and has been ignored. To the extent necessary, Fontaine denies all other allegations included in Paragraph 99.

70. With regard to the allegations of Paragraph 100, Fontaine craves reference to the Loan Agreement for a precise statement of its terms and obligations. Fontaine does not have sufficient

knowledge or information upon which to form an opinion concerning the reason DRV submitted the notice of increases in the Capital Reserve and Rollover Reserve Accounts, and, therefore, denies any representation by DRV as to its intent in connection with the same. Moreover, Fontaine avers that the contemplated increases, among other things, were arbitrary, capricious, and not commercially reasonable. To the extent necessary, Fontaine denies all other allegations included in Paragraph 100.

71. Fontaine admits the allegations of Paragraph 101 that DRV and Fontaine discussed the Reserve Accounts on or about August 1, 2011. Fontaine denies that it agreed to develop a plan to address the "cash needs . . . to properly fund the Reserve Accounts." Fontaine avers that the Reserve Accounts were at all times sufficiently funded and, when the Complaint was filed, contained excess funds, which entitled Fontaine to a refund or credit toward any amounts due or owing under the Loan Documents. To the extent necessary, Fontaine denies all other allegations included in Paragraph 101.

72. Fontaine admits the allegation of Paragraph 102. Fontaine avers that the payments were submitted under protest. Fontaine avers that it paid the reassessed monthly contributions for four months in a good faith attempt to meet DRV's arbitrary, capricious, and unreasonable demands while attempting to resolve the dispute over DRV's actions.

73. Fontaine generally denies the allegations of Paragraph 103 because the allegations are argumentative. Fontaine admits the allegation of Paragraph 103 that, in January 2012, Fontaine made the monthly payments into the Reserve Accounts in the amounts specified in the Loan Agreement. Fontaine avers that it reverted to the original amounts specified in the Loan Agreement because the reassessed amounts were arbitrarily and capriciously imposed in contravention of the Loan Agreement and applicable law, and DRV failed and refused to adjust the monthly payments downward consistent with its requests, as well as the applicable provisions of the Loan Agreement.

Fontaine avers that the reassessed monthly contributions were arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. Fontaine further avers that the increases remain unsubstantiated despite Fontaine's repeated, reasonable requests for disclosure of the information DRV relied upon, including its underwriting guidelines, in demanding the increases. To the extent necessary, Fontaine denies all other allegations included in Paragraph 103.

74. Fontaine denies the allegation of Paragraph 104 that it breached any of its obligations with respect to funding the Reserve Accounts or any other provision of the Loan Documents. Fontaine avers that the Reserve Accounts were, at all times, sufficiently and/or excessively funded. Fontaine admits that DRV objected to the amounts paid into the Reserve Accounts. Fontaine denies that it had a binding agreement under the terms of the Loan Agreement to develop a plan to fund the Reserve Accounts. To the extent necessary, Fontaine denies all other allegations included in Paragraph 104.

75. Fontaine admits the allegations of Paragraph 105 to the extent that the allegations are consistent with the Loan Documents, which speak for themselves, and craves reference to the Loan Documents for a precise statement of their terms and obligations. Fontaine denies the allegations of Paragraph 105 to the extent that they are inconsistent with the Loan Documents.

76. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 106 and, therefore, denies the allegations.

77. Fontaine admits the allegation of Paragraph 107. Fontaine avers that the payments were submitted under protest. Fontaine avers that it paid the reassessed monthly contributions for the applicable months in a good faith attempt to meet DRV's arbitrary, capricious, and unreasonable demands while attempting to resolve the dispute over DRV's actions. To the extent necessary, Fontaine denies all other allegations included in Paragraph 107.

78. Fontaine denies the allegation of Paragraph 108 because it is argumentative. Fontaine avers that it has continued to fund the Tax and Insurance Account in accordance with the terms of the Loan Agreement and that the Tax and Insurance Account was, at all times, sufficiently and/or excessively funded. Fontaine avers that DRV's reassessment of the contribution to the Tax and Insurance Account was arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. To the extent necessary, Fontaine denies all other allegations included in Paragraph 108.

79. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 109 about DRV's beliefs and, therefore, denies the allegations. Fontaine avers that DRV knew or should have known that the increased monthly payment was not permitted under the Loan Agreement and not justified under the circumstances. Fontaine avers that DRV's reassessment of the contribution to the Tax and Insurance Account was arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. Fontaine avers that the monthly payments have been maintained in compliance with the terms of the Loan Agreement. Fontaine also avers all insurance and tax obligations that are funded through the Tax and Insurance Account have been timely paid to date, contradicting DRV's "belief" that the balance in the Tax and Insurance Account is now or ever has been insufficient. To the extent necessary, Fontaine denies all other allegations included in Paragraph 109.

80. Fontaine denies the allegation of Paragraph 110 that it did not abide by its agreements with DRV and denies any so-called "shortfall," except to the extent Fontaine's operating funds were depleted by DRV's failure and refusal to timely refund excess Reserves. Fontaine does not have sufficient knowledge or information to form an opinion concerning the correctness of the allegation that DRV gave Fontaine "the benefit of the doubt" as to any alleged conduct; however, given DRV's exorbitant increases in the Reserve Accounts and its heavy-handed demands, Fontaine denies that it

has been afforded any "benefit" by DRV. To the extent necessary, Fontaine denies all other allegations included in Paragraph 110.

81. Fontaine generally denies the allegations of Paragraph 111 because the allegations are argumentative. Fontaine denies the allegation that it was under an obligation to present any contemplated solution. Fontaine denies that its contributions to the Tax and Insurance Account resulted in any shortage. Fontaine does not have sufficient knowledge or information upon which to form an opinion as to what DRV believed was "apparent." Fontaine avers that DRV knew or should have known that the increases were arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. Fontaine avers that the increases remain unsubstantiated despite Fontaine's repeated, reasonable requests for disclosure of the information DRV relied upon in demanding the increases. To the extent necessary, Fontaine denies all other allegations included in Paragraph 111.

82. Fontaine admits the allegation of Paragraph 112 that DRV provided a notice concerning the Reserve Accounts. Fontaine denies the implicit allegation that the notice was justified. Fontaine denies the implicit allegation that it was failing to make the full payments required under the Loan Agreement. Fontaine denies that any of its conduct has ever constituted an Event of Default. To the extent necessary, Fontaine denies all other allegations included in Paragraph 112.

83. Fontaine admits the allegation of Paragraph 113 that it did not make the improperly demanded payment. Fontaine avers that the demand was not permitted under the Loan Agreement and was not justified under the circumstances. Fontaine avers that the demand was arbitrary, capricious, excessive, unreasonable, unjustified, unsupported, invalid, void, and unenforceable. Moreover, when Fontaine requested a reassessment of the demanded payments and, if applicable, a refund or credit for the excessive overpayments, it was ignored by the Plaintiff. To the extent necessary, Fontaine denies all other allegations included in Paragraph 113.

84. Fontaine denies the allegation of Paragraph 114 that its failure to make the demanded payment constituted an Event of Default. Fontaine avers that the demand was not permitted under the Loan Agreement and was not justified under the circumstances. Fontaine avers that the reassessed monthly contributions and the demand for payment were arbitrary, capricious, excessive, unreasonable, unjustified, unsupported, invalid, void, and unenforceable. To the extent necessary, Fontaine denies all other allegations included in Paragraph 114.

85. Fontaine denies the allegation of Paragraph 115. Fontaine avers that as of October 2012 all amounts due and payable under the Loan Agreement were current. Fontaine further avers that DRV is in possession of excess funds as a result of the unconscionable increases in the required monthly contributions to the Reserve Accounts and that, notwithstanding multiple requests, DRV's refusal to refund the excess funds or credit the funds to the debt service payments artificially manufactured the alleged default and prevented Fontaine from making the debt service payment. To the extent necessary, Fontaine denies all other allegations included in Paragraph 115.

86. Fontaine denies the allegation of Paragraph 116. Fontaine denies the allegation that an Event of Default has occurred. Fontaine avers that as of October 2012 all amounts due and payable under the Loan Agreement were current. Fontaine further avers that DRV is in possession of excess funds as a result of the unconscionable increases in the required monthly contributions to the Reserve Accounts and that DRV's refusal, notwithstanding multiple requests, to refund the excess funds or credit the funds to the debt service payments artificially fabricated the alleged default and prevented Fontaine from making the debt service payment. Moreover, Fontaine avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 116 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, Fontaine denies all other allegations included in Paragraph 116.

87. Fontaine admits the allegation of Paragraph 117 that DRV's counsel provided notice of its perceived Event of Default. Fontaine denies that an Event of Default ever occurred. Moreover, Fontaine avers that the Loan Documents speak for themselves and craves reference to the same for a precise statement of their terms and obligations. Fontaine denies the allegations of Paragraph 117 to the extent that the allegations are inconsistent with the terms of the Loan Documents. To the extent necessary, Fontaine denies all other allegations included in Paragraph 117.

88. Fontaine admits the allegation of Paragraph 118 that DRV has purported to accelerate the entire Debt. Fontaine denies the allegation that the acceleration of the Debt was permissible under the Loan Agreement and/or justified by the circumstances. Fontaine avers that the purported acceleration was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing exorbitant increases in the monthly contributions to the Reserve Accounts. Moreover, Fontaine avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 118 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, Fontaine denies all other allegations included in Paragraph 118.

89. Fontaine admits the allegation of Paragraph 119 that DRV has purported to exercise its right to apply the Default Rate of interest under the Loan Agreement. Fontaine denies the allegation that the exercise of the right to apply the Default Rate of interest was permissible under the Loan Agreement or justified by the circumstances. Fontaine avers that the purported exercise of the right to apply the Default Rate of interest was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing exorbitant increases, without any exercise of

reasonable discretion, in the monthly contribution to the Reserve Accounts. Moreover, Fontaine avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 119 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, Fontaine denies all other allegations included in Paragraph 119.

90. Fontaine admits the allegation of Paragraph 120 that DRV has improperly demanded that Fontaine terminate its property manager. Fontaine denies that the demand is permissible under the Loan Agreement or justified by the circumstances. Fontaine avers that the demand was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing an exorbitant increase in the monthly contributions to the Reserve Accounts. Moreover, Fontaine avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. Fontaine denies the allegations of Paragraph 120 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, Fontaine denies all other allegations included in Paragraph 120.

91. Fontaine denies the allegations of Paragraph 121.

92. Fontaine admits the allegation of Paragraph 122 that it has failed or refused to comply with the improper demand to terminate the current management agreement. Fontaine denies that the demand is permissible under the Loan Agreement or justified by the circumstances. Fontaine avers that the demand is arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it can only be justified by the alleged default artificially manufactured by DRV through its commercially unreasonable conduct with respect to the Reserve Accounts. Moreover, Fontaine denies that Paragraph 122, or any other Paragraph in the Complaint, is

supported by any affidavit. To the extent necessary, Fontaine denies all other allegations included in Paragraph 122.

93. Fontaine admits the allegation of Paragraph 123 that DRV has purported to terminate Fontaine's license to collect rents and profits generated by the Property. Fontaine denies that the purported termination is permissible under the Loan Agreement or justified by the circumstances. Fontaine avers that the purported termination was arbitrary, capricious, unreasonable, unjustified, unsupported, and invalid because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing an exorbitant increase in the monthly contributions to the Reserve Accounts. To the extent necessary, Fontaine denies all other allegations included in Paragraph 123.

94. Fontaine admits the allegation of Paragraph 124 that it has failed or refused to comply with the improper demand to terminate its license to collect rents and profits generated by the applicable Real Property. Fontaine denies that the purported termination is permissible under the Loan Agreement or justified by the circumstances. Fontaine avers that the attempt to terminate the license is arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it can only be justified by the alleged default artificially manufactured by DRV through its commercially unreasonable conduct with respect to the Reserve Accounts. Fontaine admits the allegation of Paragraph 124 that it continues to exercise control over the rents and profits from the Property. Fontaine avers that it does so in accordance with its rights under the Loan Documents and applicable law. To the extent necessary, Fontaine denies all other allegations included in Paragraph 124.

95. Fontaine denies the allegations in Paragraph 125. Fontaine avers that as of the date of the Complaint, all payments legitimately due and owing under the Loan Agreement were current. Fontaine demands an accounting of all funds received during the period of the dispute between the parties. To the extent necessary, Fontaine denies all other allegations included in Paragraph 125.

96. Paragraph 126 states a legal conclusion, to which no response is required. To the extent necessary, Fontaine denies the allegations included in Paragraph 126.

97. Fontaine avers that Paragraph 127 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, Fontaine denies all other allegations included in Paragraph 127.

98. Fontaine avers that Paragraph 128 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, Fontaine denies all other allegations included in Paragraph 128.

99. Fontaine avers that Paragraph 129 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, Fontaine denies all other allegations included in Paragraph 129.

100. Fontaine denies the allegations of Paragraph 130 that DRV has a right to recover a deficiency judgment in this action under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of such a claim for relief. To the extent necessary, Fontaine denies all other allegations included in Paragraph 130.

101. Fontaine admits the allegations of Paragraph 131 to the extent that the allegations are consistent with the applicable Guaranty Agreements. Fontaine avers that the Guaranty Agreements speak for themselves, and craves reference to the Guaranty Agreements for a precise statement of their terms and obligations. Fontaine denies the allegations of Paragraph 131 to the extent the allegations are inconsistent with the terms of the Guaranty Agreements.

102. Fontaine denies the allegations of Paragraph 132 that DRV has a right to recover any amount of damages in this action, let alone under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of any claim for relief. To the extent necessary, Fontaine denies all other allegations included in Paragraph 132.

103. Fontaine denies the allegations of Paragraph 133 that DRV has a right to recover any amount of damages in this action, let alone under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of any claim for relief. To the extent necessary, Fontaine denies all other allegations included in Paragraph 133.

AFFIRMATIVE DEFENSES

104. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

105. Failure to State a Claim. DRV's complaint fails to state a claim upon which relief can be granted. Accordingly, pursuant to South Carolina Rule of Civil Procedure 12(b)(6), DRV cannot recover against Fontaine, and its Complaint should be dismissed, with prejudice.

106. Equitable Defenses. Some or all of the claims asserted in the Complaint are barred by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands. Among others, DRV was the first party to breach the terms of the Loan Agreement by virtue of its arbitrary, capricious, unconscionable, and outrageous conduct with respect to the Reserve Accounts. Moreover, DRV has taken affirmative actions--e.g. withholding excess funds--that have contributed to or caused the alleged default under the Loan Documents. Given these actions, DRV is barred from seeking the equitable, or any other remedies, prayed for in the Complaint.

107. Offset. Fontaine is entitled to an offset with respect to any damages, the existence of which are expressly denied, allegedly suffered by DRV. In particular, DRV's damages, if any, must be reduced by the value of any improvements to the Real Property at issue in this case or the increased value created by Fontaine, and Fontaine should be given a credit against the excessive amounts residing in the Reserve Accounts as of the filing of the Complaint.

108. Good Faith Dispute. There exists a bona fide, good faith dispute over the amounts, if any, due DRV; therefore, DRV may not recover attorneys' fees. Further, Fontaine has previously

contacted DRV in an attempt to resolve this matter without recourse to legal action. Nonetheless, DRV has unreasonably incurred attorneys' fees in prosecution of this action.

109. Failure to Mitigate. DRV has failed to mitigate its alleged damages, the existence of which are expressly denied. To the extent DRV seeks to recover these damages, DRV's reward must be reduced by that portion that it failed to mitigate.

110. Impossibility of Performance. Fontaine's performance under the Loan Agreement is excused under the doctrine of Impossibility of Performance. In particular, DRV's unconscionable and outrageous conduct in arbitrarily and capriciously imposing exorbitant increases in the monthly contributions to the Reserve Accounts has rendered Fontaine's performance under the Loan Documents impossible. The exorbitant increases far exceed the rents and profits that the applicable Real Property is reasonably expected to generate.

111. Prevention of Performance. Fontaine's performance under the Loan Agreement is excused under the doctrine of Prevention of Performance. In particular, DRV's unconscionable and outrageous conduct in arbitrarily and capriciously imposing exorbitant increases in the monthly contributions to the Reserve Accounts and then failing to refund or credit excess funds toward the debt service, after multiple requests, has improperly prevented Fontaine's performance under the Loan Documents.

112. Appraisal Rights. Fontaine gives notice of its intention to exercise its rights to demand an appraisal of the applicable Real Property in accordance with S.C. Code Ann. §§ 29-3-680. Section 29-3-680 provides that the right to an appraisal in a foreclosure action may be waived in the Loan Documents, if the language specified in the statute is used and the waiver appears "on a page containing the signature of the person making the waiver." The purported waiver of appraisal rights is in the Loan Documents on page 15 of the Mortgage. In contravention of South Carolina law, the waiver appears on a page that is devoid of signatures.

113. Additional Affirmative Defenses.

a. The Plaintiff has failed to comply with its obligations under Administrative Orders 2009-05-22-01 and 2011-05-02-01 of the Supreme Court of South Carolina.

b. Some of the Exhibits to the Complaint appear to not be in final format.

c. To the extent any assignment alleged in the Complaint was not consummated in a manner that is consistent with applicable law, the applicable assignment is null and void.

d. To the extent any Loan Document was not properly executed, the applicable Loan Document is null and void.

e. To the extent any security interest alleged in the Complaint was not properly memorialized and/or perfected in a manner that is consistent with applicable law, the applicable security interest is null and void.

f. Given the nature of the facts as alleged, together with the Counterclaims articulated below, any reference to the Master in Equity for Richland County would be premature at this juncture. Rather, and consistent with applicable South Carolina law, all proper issues to be presented to a jury should be tried first in the Court of Common Pleas, and then, to the extent necessary, any remaining issues so referred thereafter.

g. Given the nature of the facts as alleged above, together with the Counterclaims articulated below, the appointment of any Receiver would not be appropriate in this matter.

h. Doctrine of first material breach.

i. Unconscionability.

j. Fontaine has a right of recoupment with regard to the excess funds currently residing in the Reserve Accounts pursuant to S.C. Code Ann. § (a)(2), and other applicable law.

114. Reservation of Defenses. To the extent permitted by law, Fontaine reserves the right to amend and supplement its affirmative defenses to include any applicable defenses of which it is not presently aware. Fontaine has not had an opportunity to conduct a full investigation or to engage in adequate discovery concerning DRV's allegations. In this regard, DRV's continued refusal to disclose any substantiation for its decision to exponentially increase the funding levels for the Reserve Accounts is particularly noteworthy. Accordingly, Fontaine reserves the right to amend this Answer to assert any subsequently discovered defenses.

NOW, THEREFORE, having responded to the allegations of the Complaint and raised applicable defenses, Fontaine sues DRV for the following Counterclaims.

COUNTERCLAIMS

115. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

116. On December 14, 2007, Fontaine and Greenwich Capital entered into certain Loan Documents, including, among others, a Loan Agreement, a Promissory Note, a Mortgage, an Assignment of Leases and Rents, and other related documents.

117. DRV is the current holder of the Loan Documents.

118. The Loan Agreement established various Reserve Accounts into which Fontaine was required to make monthly contributions, including, in particular, a Tax and Insurance Account (Section 3.3, p. 23), a Capital Reserve Account (Section 3.4, p. 24), and a Rollover Reserve Account (Section 3.5, p. 24).

119. The Tax and Insurance Account provision requires Fontaine to pay DRV one-twelfth of the taxes and insurance premiums that DRV estimates will be payable during the next year in order to accumulate sufficient funds to pay the taxes and insurance premiums at least 30 days before they are due.

120. If DRV "determines in its reasonable judgment" that the funds in the Tax and Insurance Account will be insufficient to pay, or in excess of, the taxes and premiums due, DRV may increase or decrease the monthly contribution Fontaine is required to pay.

121. Under Section 5.2 of the Loan Agreement (p. 35), Fontaine is authorized to pay the taxes and insurance premiums directly and deliver receipts to DRV for reimbursement.

122. The Capital Reserve Account provision requires Fontaine to make a monthly payment to the Reserve Account in the amount of $5,249.

123. The Capital Reserve Account provision allows DRV, "upon 30 days' prior notice," to reassess the amount of the monthly payment from time to time in its "reasonable discretion," based upon its "then current underwriting standards."

124. The Capital Reserve Account is a custodial account.

125. The Capital Reserve Account is maintained by DRV for the benefit of Fontaine.

126. The Rollover Reserve Account provision required Fontaine to make an initial deposit in the amount of $750,000 to fund Approved Leasing Expenses.

127. Approved Leasing Expenses are defined as "actual out-of-pocket expenses incurred by Borrower and payable to third parties that are not Affiliates of Borrower or Guarantor in leasing space at the Property pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (i) are (A) specifically approved by Lender in connection with approving the applicable Lease, (B) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not

require Lender's approval under the Loan Documents, or (C) otherwise approved by Lender, which approval shall be unreasonably withheld or delayed, and (ii) are substantiated by executed Lease documents and brokerage agreements."

128. Beginning on the thirty-eighth payment date, the Rollover Reserve Account provision required Fontaine to begin making monthly payments in the amount of $21,086.50.

129. The Rollover Reserve Account has a minimum balance of $250,000.

130. The Rollover Reserve Account provision allows DRV to increase or decrease Fontaine's monthly payment, if DRV determines "in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses." Additionally, Approved Leasing Expenses is defined as actual out-of-pocket expenses incurred by Fontaine in leasing space at the property.

131. The Rollover Reserve Account is a custodial account.

132. The Rollover Reserve Account is maintained by DRV for the benefit of Fontaine.

133. When DRV reassessed the Rollover Reserve Account, Fontaine had not incurred any out-of-pocket expenses in leasing space at the Property.

134. When DRV reassessed the Rollover Reserve Account, no Approved Leasing Expenses were due or to become due in such an amount that would have decreased the balance of the Rollover Reserve Account below the minimum required by the Loan Agreement.

135. Greenwich Capital, the Original Lender, never reassessed the Capital Reserve Account or the Rollover Reserve Account.

136. Greenwich Capital provided Fontaine monthly statements concerning the debt service and the Reserve Accounts.

137. Royal Bank of Scotland ("RBS"), the first assignee of the Loan Documents, never reassessed the Capital Reserve Account or the Rollover Reserve Account.

138. RBS provided Fontaine with monthly statements concerning the debt service and the Reserve Accounts.

139. There was never a shortage in either the Capital Reserve Account or the Rollover Reserve Account while Greenwich Capital held the Loan Documents.

140. There was never a shortage in either the Capital Reserve Account or the Rollover Reserve Account while RBS held the Loan Documents.

141. In July 2011, DRV notified Fontaine of the reassessment of the Capital Reserve Account and the Rollover Reserve Account.

142. At that time, and without proper justification, DRV reassessed the monthly payment for the Capital Reserve Account from the original amount of $5,249 to $54,476.34.

143. The reassessment of the Capital Reserve Account constituted a one-time increase of 1,037%.

144. At that time, and without proper justification, DRV also reassessed the monthly payment for the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91.

145. The reassessment of the Rollover Reserve Account constituted a one-time increase of 756%.

146. Fontaine disputed the validity of the reassessments to the Capital Reserve Account and the Rollover Reserve Account, and sought, on multiple occasions, justification and substantiation, under applicable provisions of the Loan Documents, in connection with the same.

147. As a gesture of good faith while seeking a resolution to the dispute, Fontaine voluntarily added $736,000 to the Reserve Accounts.

148. The third-party property manager requested certain capital improvements in 2011 and 2012, but 95% of those requests were not undertaken. In its Complaint, DRV admitted that it based its reassessment of the Reserve Accounts on these mostly unfulfilled requests.

149. In April 2012, DRV notified Fontaine of the reassessment of the Tax and Insurance Account.

150. DRV claimed the reassessment was to correct a projected shortfall in the Tax and Insurance Account.

151. The Tax and Insurance payment was reassessed on the assumption that insurance premiums would increase at least 46% from the previous years' premiums.

152. The Tax and Insurance monthly payment was reassessed from $722 to $5,272.97.

153. The reassessment of the Tax and Insurance payment constituted a one-time increase of 630%.

154. On June 11, 2012, Ronald Guerena of Marsh Risk and Insurance Service advised DRV that Fontaine's premiums were not expected to increase as significantly as DRV purported.

155. At that time, Mr. Guerena advised DRV that Fontaine's monthly payment should be $3,100.

156. As required by the Loan Agreement, Fontaine asked DRV to justify and substantiate the reasonableness of all reassessments, including a detailed written explanation of the reassessments and the underwriting guidelines according to which the reassessments were completed. These requests were generally ignored.

157. The only explanation provided by DRV in this regard relates to the Capital Reserve Account. DRV explained that the reassessment to the Capital Reserve Account was based upon the capital expenditure recommendations from the third-party property manager, which was submitted by the property manager directly to DRV without Fontaine's approval or input. Moreover, approximately 95% of the recommended expenditures never came to fruition.

158. Fontaine avers that the reassessments were calculated and imposed arbitrarily and capriciously. Moreover, they were apparently based on a certain capital improvement requests that were chiefly unfulfilled and not approved or adopted by Fontaine.

159. Fontaine avers that the reassessments were arbitrary, capricious, exorbitant, unreasonable, unconscionable, invalid, void, and unenforceable.

160. Moreover, Fontaine avers that DRV's demands for payment have been heavy-handed, unconscionable, and outrageous.

161. As a result of the arbitrary and capricious reassessments, DRV is now in possession of excess funds of Fontaine comprised of any and all amounts due under the Loan Documents in an amount believed to exceed $500,000 when the Complaint was filed.

162. Fontaine is entitled to a refund of the erroneous and improper payments to the Reserve Accounts. Alternatively, Fontaine is entitled to have the excess funds in the Reserve Accounts credited to the debt service. When such requests were made to DRV, they were ignored.

163. DRV has demanded that Fontaine terminate its property manager.

164. DRV claims a right to demand termination as a result of Fontaine's improperly alleged defaults.

165. The alleged defaults upon which DRV relies in demanding termination of the property manager were fabricated by DRV through manipulation of the reassessment process.

166. During this dispute over funding for the Reserve Accounts, Fontaine has repeatedly requested DRV to reassess the Reserve Account payments, account for all funds paid by Fontaine, and provide substantiation (including a review of applicable underwriting guidelines) for the reassessments. These requests have been ignored.

167. Notwithstanding the provisions of the Loan Documents and multiple requests from Fontaine, DRV has not reassessed the Reserve Accounts.

168. Notwithstanding the provisions of the Loan Documents and multiple requests from Fontaine, DRV has not accounted for all funds paid by Fontaine.

169. Notwithstanding the provisions of the Loan Documents and multiple requests from Fontaine, DRV has not provided substantiation for the reassessments.

170. The course of business between Fontaine and the holder of the Loan Documents, currently includes the provision of monthly statements of the debt service and Reserve Account balances since then.

171. DRV continued that course of business until this dispute arose.

172. DRV has stopped providing monthly statements of the debt service and Reserve Account balances.

FIRST COUNTERCLAIM: ACCOUNTING

173. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

174. DRV is required by the Loan Documents and applicable law to provide an accounting of all amounts received from or on behalf of Fontaine and all amounts claimed to be due and accruals thereof. Fontaine expressly demands that Plaintiff make such an accounting.

SECOND COUNTERCLAIM: BREACH OF CONTRACT

175. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

176. The Loan Documents created a valid and binding contract between DRV and Fontaine. DRV has violated the terms of that contract and breached the implied covenant of good faith and fair dealing by, among other things:

(a) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Capital Reserve Account from the original amount of $5,249 to $54,476.34, which represents a one-time increase of 1,037%, and demanding payment on 60 days' notice.

(b) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91, which represents a one-time increase of 756%, and demanding payment on 60 days' notice.

(c) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Tax and Insurance Account from the original amount of $722 to $5,272.97, which represents a one-time increase of 630%, and demanding payment on 60 days' notice.

(d) Arbitrarily and capriciously reassessing Fontaine's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it rendered Fontaine's performance under the contract impossible, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(e) Arbitrarily and capriciously reassessing Fontaine's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it has prevented Fontaine's performance under the contract, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(f) Refusing to provide justification and substantiation of the reassessments--including requests for review of applicable underwriting guidelines.

(g) Refusing to provide monthly statements of the debt service and Reserve Account balances.

(h) Accepting excess payments for the Reserve Accounts and then refusing to refund the excess payments or, alternatively, refusing to credit the payments to the debt service.

(i) Declaring an Event of Default and invoking the Default provisions when no Event of Default has occurred.

(j) Manipulating the process of reassessment of Reserve Accounts to manufacture an Event of Default.

177. Fontaine is entitled to damages against DRV for these breaches in an amount to be proven at trial.

THIRD COUNTERCLAIM: BREACH OF FIDUCIARY DUTY

178. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

179. The Loan Documents created a confidential and fiduciary relationship between DRV and Fontaine, especially with respect to the maintenance and reassessment of the Reserve Accounts (which are custodial accounts), and other licensing agreements. DRV has violated its fiduciary duty to Fontaine by, among other things:

(a) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Capital Reserve Account from the original amount of $5,249 to $54,476.34, which represents a one-time increase of 1,037%, and demanding payment on 60 days' notice.

(b) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91, which represents a one-time increase of 756%, and demanding payment on 60 days' notice.

(c) Arbitrarily and capriciously reassessing Fontaine's monthly payment to the Tax and Insurance Account from the original amount of $722 to $5,272.97, which represents a one-time increase of 630%, and demanding payment on 60 days' notice.

(d) Arbitrarily and capriciously reassessing Fontaine's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it rendered Fontaine's

performance under the contract impossible, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(e) Arbitrarily and capriciously reassessing Fontaine's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it has prevented Fontaine's performance under the contract, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(f) Refusing to provide justification and substantiation of the reassessments--including requests for review of applicable underwriting guidelines.

(g) Refusing to provide monthly statements of the debt service and Reserve Account balances.

(h) Accepting excess payments for the Reserve Accounts and then refusing to refund the excess payments or, alternatively, refusing to credit the payments to the debt service.

(i) Declaring an Event of Default and invoking the Default provisions when no Event of Default has occurred.

(j) Manipulating the process of reassessment of Reserve Accounts to manufacture an Event of Default.

180. Fontaine is entitled to damages against DRV for these breaches in an amount to be proven at trial.

FOURTH COUNTERCLAIM: REFORMATION OF INSTRUMENTS

181. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

182. The drafting of the Loan Documents and the recent course of business between the parties evinces a mutual mistake with respect to Lender/Holder's authority to reassess Fontaine's

contributions to the various Reserve Accounts. At the time of drafting, the parties intended for the reassessment of Reserve Accounts to be conducted in a commercially reasonable manner in consideration of, among other things, the rents and profits reasonably expected to be generated by the applicable Real Property. However, the drafting process did not capture the parties' intentions.

183 Therefore, the instruments should be reformed to afforded the parties the powers, obligations, and protections that were originally intended.

FIFTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

184. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

185. Fontaine has entered into a valid contract with a third-party property manager. DRV is aware of the existence of the applicable management contract. Through its manipulation of the reassessment process and invocation of the default remedies, DRV has directed Fontaine to terminate that contract without justification.

186. DRV's conduct has damaged Fontaine in an amount to be proved at trial.

SIXTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH BUSINESS OR PROSPECTIVE CONTRACTUAL RELATIONS

187. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

188. Fontaine has a long time business relationship with a third-party property manager. DRV is aware of the existence of this relationship. Through its manipulation of the reassessment process and invocation of the default remedies, DRV has directed Fontaine to terminate its business relationship with said third-party property manager without justification.

189. DRV's conduct has damaged Fontaine in an amount to be proved at trial.

SEVENTH COUNTERCLAIM: TORT OF ECONOMIC DURESS

190. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

191. Fontaine has been harmed by the unlawful actions of DRV, as described above.

192. This harm has deprived Fontaine of its ability to transact freely in the marketplace as a business citizen.

193. This harm has caused Fontaine to be compelled to make a disproportionate exchange of value in connection with its business.

194. This disproportionate exchange of value was made by Fontaine solely for the purposes of protecting it business and property interests.

195. DRV's conduct has damaged Fontaine in an amount to which it is entitled under law to be proved at trial.

EIGHTH COUNTERCLAIM: DECLARATORY JUDGMENT

196. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

197. DRV has sought the entry of a deficiency judgment against Fontaine and the other Defendants.

198. Fontaine seeks a declaratory judgment pursuant to the terms of S.C. Code Ann. §§ 15-53-10 et seq.

199. An actual, justiciable controversy and dispute exists between DRV and Fontaine.

200. South Carolina law provides that:

SECTION 29-3-680. Application for order of appraisal.

(A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty

days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-021(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

"The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY."

This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underline, in capital letters, or disclosed in another prominent manner. (Emphasis added).

201. The purported waiver of appraisal rights is contained on page 15 of the Mortgage.

202. In contravention of South Carolina law, there are no signatures found on that page.

203. Fontaine, therefore, respectfully requests that the Court make the following judicial declarations:

a. That no Defendant has waived its appraisal rights provided by South Carolina law; and

b. That, as such, and if it ever becomes applicable, any Defendant may exercise its appraisal rights in accordance with SC Code §§ 29-3-680 et seq.

WHEREFORE, in consideration of the preceding Answer, Affirmative Defenses, and Counterclaims, Fontaine prays that a jury be empaneled to try the appropriate issues herein, and that this Honorable Court enter judgment against DRV as follows:

A. Dismissing DRV's Complaint, with prejudice;

B. Assessing all costs associated with this action against DRV, and, given the egregious behavior of DRV, awarding Fontaine recovery of its reasonable attorneys' fees and expenses, as well as any other applicable statutory or common law damages available to Fontaine under the circumstances;

C. Ordering DRV to provide Fontaine with an accounting of all payments received for debt service and Reserve Accounts during the period of time in which it has been the holder of the Loan Documents;

D. Awarding Fontaine a judgment against DRV for all amounts found to be due as a result of DRV's breaches of contract;

E. Awarding Fontaine a judgment against DRV for all amounts found to be due as a result of DRV's breaches of fiduciary duty;

F. Awarding Fontaine a judgment against DRV for all amounts found to be due as a result of DRV's tortious interference with contract;

G. Awarding Fontaine a judgment against DRV for all amounts found to be due as a result of DRV's tortious interference with business or prospective contractual relations;

H. Reforming the instruments to prevent future abuse by DRV or any subsequent holder and imposing the requirements of commercially reasonable conduct originally intended by the parties;

I. Declaring that the waiver appraisal rights in the Loan Documents is contrary to South Carolina law and, therefore, ineffective and unenforceable; and that any Defendant not a signatory to the waiver be entitled to demand an appraisal; and

J. Awarding such other and further relief as deemed just and proper under the circumstances.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

Brent B. Young (S.C.Bar No. 74173)
Attorney at Law
100 Med Tech Parkway, Suite 200
Johnson City, TN 37604
(423) 928-0181
byoung@bakerdonelson.com

Attorneys for Fontaine Business Park, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer and Counterclaim has been served on the following attorney for Plaintiff:

RICHLAND COUNTY
FILED
2012 DEC -3 PM 2:07
JEAN H. TOAL
CLERK OF COURT

Paul D. Harrill
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Fontaine Business Park 2, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 3, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 4, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 5, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 6, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 7, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 8, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 9, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 10, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 11, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 12, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 13, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 14, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 15, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 16, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 17, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 18, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 19, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 20, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 21, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 22, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 23, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 24, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 25, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 26, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 27, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 28, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 29, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 30, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

Fontaine Business Park 31, LLC
c/o its Registered Agent
CT Corporation System
2 Office Park Court
Columbia, SC 29223

on this the 3rd day of December 2012.

Brent B. Young
Attorney at Law

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2012-CP-40-7752
DRV FONTAINE GROUP, LLC, *Plaintiff,*	)	ANSWER AND COUNTERCLAIMS OF DEFENDANTS FONTAINE BUSINESS PARK 2 -31
v.	)	**(Jury Trial Demanded)**
THE FONTAINE BUSINESS PARK, LLC, *et al.*, *Defendants.*	)	

2012 JAN 11 PM 12:19
JEANETTE W. McBRIDE
C.P. & G.S.
RICHLAND COUNTY
FILED

TO: PLAINTIFF DRV FONTAINE FROUP, LLC, BY AND THROUGH ITS ATTORNEY OF RECORD, PAUL HARRILL

YOU WILL PLEASE TAKE NOTICE that the following Defendants in this action: Fontaine Business Park 2, LLC; Fontaine Business Park 3, LLC; Fontaine Business Park 4, LLC; Fontaine Business Park 5, LLC; Fontaine Business Park 6, LLC; Fontaine Business Park 7, LLC; Fontaine Business Park 8, LLC; Fontaine Business Park 9, LLC; Fontaine Business Park 10, LLC; Fontaine Business Park 11, LLC; Fontaine Business Park 12, LLC; Fontaine Business Park 13, LLC; Fontaine Business Park 14, LLC; Fontaine Business Park 15, LLC; Fontaine Business Park 16, LLC; Fontaine Business Park 17, LLC; Fontaine Business Park 18, LLC; Fontaine Business Park 19, LLC; Fontaine Business Park 20, LLC; Fontaine Business Park 21, LLC; Fontaine Business Park 22, LLC; Fontaine Business Park 23, LLC; Fontaine Business Park 24, LLC; Fontaine Business Park 25, LLC; Fontaine Business Park 26, LLC; Fontaine Business Park 27, LLC; Fontaine Business Park 28, LLC; Fontaine Business Park 29, LLC; Fontaine Business Park 30, LLC; and Fontaine Business Park 31, LLC [hereinafter collectively known as the "TIC

Investor Group"]; submit the following Answer, Defenses, and Counterclaims in response to the Complaint filed by Plaintiff DRV Fontaine, LLC ("DRV").

ANSWER

1. The TIC Investor Group denies each allegation of the Complaint generally unless otherwise admitted, qualified, or explained. More particularly, the TIC Investor Group denies that any Events of Default have occurred under the applicable Loan Documents. The TIC Investor Group avers that all payments due under the applicable Loan Documents were current as of the date of the Complaint.

2. The TIC Investor Group admits the allegations in Paragraphs 1 through 32 concerning the parties herein.

3. The TIC Investor Group admits the allegations in Paragraph 33 concerning the situs of the Real Property and venue herein.

4. The TIC Investor Group admits the allegations of personal jurisdiction and subject matter jurisdiction in Paragraph 34.

5. The TIC Investor Group incorporates and re-alleges its responses in Paragraphs 1 through 4 in response to the allegation of Paragraph 35.

6. The TIC Investor Group does not possess sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraphs 36 through 50 and therefore denies those allegations. Strict proof is demanded thereof.

7. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 51 and, therefore, denies the allegations. Strict proof is demanded thereof. Moreover, to the extent such UCC financing statements exist, such statements could not be considered fixture filings and could not be

perfected by filing with the Richland County Register of deeds. Any UCC financial statements for the personal property allegedly secured were required to be filed with the South Carolina Secretary of State as prescribed in S.C. Stat. Ann. § 36-9-501.

8. The TIC Investor Group does not possess sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraphs 52 through 56 and therefore denies those allegations. Strict proof is demanded thereof.

9. The TIC Investor Group admits the allegation of Paragraph 57 that a Loan Assumption Agreement was executed and delivered to Greenwich Capital. The TIC Investor Group avers that the Loan Assumption Agreement speaks for itself and craves reference to the Loan Assumption Agreement for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 57 to the extent that the allegations are inconsistent with the terms of the Loan Assumption Agreement.

10. The TIC Investor Group admits that a document similar to that described in Paragraph 58 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 58 as is consistent with the Loan Assumption Agreement, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 58 to the extent the allegations are inconsistent with the terms of the Loan Assumption Agreement.

11. The TIC Investor Group avers that Paragraph 59 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 59.

12. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 60 and, therefore, denies

the allegations. Moreover, to the extent such UCC financing statements exist, such statements could not be considered fixture filings and could not be perfected by filing with the Richland County Register of Deeds. Any UCC financial statements for the personal property allegedly secured were required to be filed with the South Carolina Secretary of State as prescribed in S.C. Stat. Ann. § 36-9-501.

13. The TIC Investor Group admits the allegation of Paragraph 61 that a Guaranty of Recourse Obligations ("Guaranty") was executed and delivered to Greenwich Capital for each Defendant in the TIC Investor Group. The TIC Investor Group avers that each separate Guaranty speaks for itself and craves reference to Guaranty for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 61 to the extent that the allegations are inconsistent with the terms of any specific Guaranty.

14. The TIC Investor Group avers that Paragraph 62 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 62.

15. The TIC Investor Group admits the allegation of Paragraph 63 that a second Guaranty of Recourse Obligations ("Guaranty 2") was executed and delivered to Greenwich Capital. The TIC Investor Group avers that Guaranty 2 speaks for itself and craves reference to Guaranty 2 for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 63 to the extent that the allegations are inconsistent with the terms of Guaranty 2.

16. The TIC Investor Group avers that Paragraph 64 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 64.

17. The TIC Investor Group admits the allegation of Paragraph 65 that an Amendment to Loan Assumption Agreement was executed and delivered to Greenwich Capital. The TIC Investor Group avers that the Amendment speaks for itself, and craves reference to the Amendment for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 65 to the extent that the allegations are inconsistent with the terms of the Amendment.

18. The TIC Investor Group admits that a document similar to that described in Paragraph 66 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 66 as is consistent with the Amendment to Loan Assumption Agreement, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 66 to the extent the allegations are inconsistent with the terms of the Amendment to Loan Assumption Agreement.

19. The TIC Investor Group avers that Paragraph 67 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 67.

20. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 68 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist, such statements could not be considered fixture filings and could not be perfected by filing with the Richland County Register of Deeds. Any UCC financial statements for the personal property allegedly secured were required to be filed with the South Carolina Secretary of State as prescribed in S.C. Stat. Ann. § 36-9-501.

21. The TIC Investor Group admits the allegation of Paragraph 69 that a third Guaranty of Recourse Obligations ("Guaranty 3") was executed and delivered to Greenwich Capital. The TIC Investor Group avers that Guaranty 3 speaks for itself and craves reference to Guaranty 3 for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 69 to the extent that the allegations are inconsistent with the terms of Guaranty 3.

22. The TIC Investor Group avers that Paragraph 70 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 70.

23. The TIC Investor Group avers that Paragraph 71 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 71.

24. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 72 and, therefore, denies the allegations. Moreover, the TIC Investor Group craves reference to any document purporting to memorialize such an assignment for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

25. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 73 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Allonge exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

26. The TIC Investor Group avers that Paragraph 74 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 74.

27. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 75 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Assignment and Assumption of Loan and Related Documents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

28. The TIC Investor Group avers that Paragraph 76 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 76.

29. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 77 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Assignment of Assignment of Leases and Rents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

30. The TIC Investor Group admits that a document similar to that described in Paragraph 78 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 78 as is consistent with the Assignment of Assignment of Leases, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The

TIC Investor Group denies the allegations of Paragraph 78 to the extent the allegations are inconsistent with the terms of the Assignment of Assignment of Leases.

31. The TIC Investor Group avers that Paragraph 79 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 79.

32. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 80 and, therefore, denies the allegations. The TIC Investor Group avers that, to the extent such an Assignment of Mortgage, Assignment of Rents and Security Agreement exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

33. The TIC Investor Group admits that a document similar to that described in Paragraph 81 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 81 as is consistent with the Assignment of Mortgage, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 81 to the extent the allegations are inconsistent with the terms of the Assignment of Mortgage.

34. The TIC Investor Group avers that Paragraph 82 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 82.

35. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 83 and, therefore, denies

the allegations. Moreover, to the extent such UCC financing statements exist, such statements could not be considered fixture filings and could not be perfected by filing with the Richland County Register of Deeds. Any UCC financial statements for the personal property allegedly secured were required to be filed with the South Carolina Secretary of State as prescribed in S.C. Stat. Ann. § 36-9-501.

36. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 84 and, therefore, denies the allegations. Moreover, the TIC Investor Group craves reference to any document purporting to memorialize such an assignment for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

37. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 85 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Allonge exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred. The TIC Investor Group avers that the second sentence of Paragraph 85 is definitional and does not make any allegation to which a response is required.

38. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 86 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Assignment and Assumption exists, it speaks for itself, and craves reference to the same for a precise statement of

its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

39. The TIC Investor Group avers that Paragraph 87 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 87.

40. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 88 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Assignment of Assignment of Leases and Rents exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

41. The TIC Investor Group admits that a document similar to that described in Paragraph 89 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 89 as is consistent with the Assignment of Assignment of Leases, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 89 to the extent the allegations are inconsistent with the terms of the Assignment of Assignment of Leases.

42. The TIC Investor Group avers that Paragraph 90 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 90.

43. The TIC Investor Group does not have sufficient knowledge or information with which to form an opinion as to the truth of the allegations in Paragraph 91 and, therefore, denies the allegations. The TIC Investor Group avers that to the extent such an Assignment of

Mortgage, Assignment of Leases and Rents and Security Agreement exists, it speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. To the extent no such proper document exists, the TIC Investor Group denies the efficacy of the contemplated assignment, or that it ever occurred.

44. The TIC Investor Group admits that a document similar to that described in Paragraph 92 is of record as stated. Moreover, the TIC Investor Group admits only so much of Paragraph 92 as is consistent with the Assignment of Mortgage, which speaks for itself, and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 92 to the extent the allegations are inconsistent with the terms of the Assignment of Mortgage.

45. The TIC Investor Group avers that Paragraph 93 is definitional and does not contain any allegation to which a response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 93.

46. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 94 and, therefore, denies the allegations. Moreover, to the extent such UCC financing statements exist, such statements could not be considered fixture filings and could not be perfected by filing with the Richland County Register of Deeds. Any UCC financial statements for the personal property allegedly secured were required to be filed with the South Carolina Secretary of State as prescribed in S.C. Stat. Ann. § 36-9-501.

47. The TIC Investor Group admits the allegations of Paragraph 95 to the extent that the allegations are consistent with the Loan Agreement, which speaks for itself, and craves reference to the Loan Agreement for a precise statement of its terms and obligations. The TIC Investor

Group denies the allegations of Paragraph 95 to the extent that they are inconsistent with the Loan Agreement.

48. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 96 and, therefore, denies the allegations.

49. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 97 and, therefore, denies the allegations. The TIC Investor Group specifically denies that it was ever presented with or was made aware of any "Capital Budget."

50. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in of Paragraph 98 and therefore denies the allegations therein. Strict proof is demanded thereof.

51. The TIC Investor Group admits the allegation of Paragraph 99 that, on July 11, 2011, DRV arbitrarily and capriciously increased the TIC Investor Group's monthly contributions to the Capital Reserve and Rollover Reserve Accounts, resulting in one-time increases related to the applicable monthly payments of 1,037% and 756%, respectively. The TIC Investor Group denies that the increases were implemented to cure projected "shortfalls" in the Fontaine Capital Budget or the Capital Budget for the Real Property. The TIC Investor Group denies that the document provided by CB Richard Ellis to DRV was the Fontaine's Capital Budget or the Capital Budget for the applicable Real Property. The TIC Investor Group avers that the document provided by CB Richard Ellis to DRV was not prepared to determine whether the Reserve Accounts were sufficiently funded. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the basis for DRV's decision to

exponentially and unreasonably increase the Reserve Accounts. The TIC Investor Group avers that it has requested DRV's underwriting guidelines and other information used by DRV to inform its reassessment process, and has been ignored. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 99.

52. With regard to the allegations of Paragraph 100, the TIC Investor Group craves reference to the Loan Agreement for a precise statement of its terms and obligations. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion concerning the reason DRV submitted the notice of increases in the Capital Reserve and Rollover Reserve Accounts, and, therefore, denies any representation by DRV as to its intent in connection with the same. Moreover, the TIC Investor Group avers that the contemplated increases, among other things, were arbitrary, capricious, and not commercially reasonable. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 100.

53. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in of Paragraph 101 and therefore denies the allegations therein. Strict proof is demanded thereof

54. The TIC Investor Group admits the allegation of Paragraph 102. The TIC Investor Group avers that the payments were submitted under protest. The TIC Investor Group avers that it paid the reassessed monthly contributions for four months in a good faith attempt to meet DRV's arbitrary, capricious, and unreasonable demands while attempting to resolve the dispute over DRV's actions.

55. The TIC Investor Group generally denies the allegations of Paragraph 103 because the allegations are argumentative. The TIC Investor Group admits the allegation of Paragraph

103 that, in January 2012, the TIC Investor Group made the monthly payments into the Reserve Accounts in the amounts specified in the Loan Agreement. The TIC Investor Group avers that it reverted to the original amounts specified in the Loan Agreement because the reassessed amounts were arbitrarily and capriciously imposed in contravention of the Loan Agreement and applicable law, and DRV failed and refused to adjust the monthly payments downward consistent with its requests, as well as the applicable provisions of the Loan Agreement. The TIC Investor Group avers that the reassessed monthly contributions were arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. The TIC Investor Group further avers that the increases remain unsubstantiated despite The TIC Investor Group's repeated, reasonable requests for disclosure of the information DRV relied upon, including its underwriting guidelines, in demanding the increases. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 103.

56. The TIC Investor Group denies the allegation of Paragraph 104 that it breached any of its obligations with respect to funding the Reserve Accounts or any other provision of the Loan Documents. The TIC Investor Group avers that the Reserve Accounts were, at all times, sufficiently and/or excessively funded. The TIC Investor Group admits that DRV objected to the amounts paid into the Reserve Accounts. The TIC Investor Group denies that it had a binding agreement under the terms of the Loan Agreement to develop a plan to fund the Reserve Accounts. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 104.

57. The TIC Investor Group admits the allegations of Paragraph 105 to the extent that the allegations are consistent with the Loan Documents, which speak for themselves, and craves reference to the Loan Documents for a precise statement of their terms and obligations. The TIC

Investor Group denies the allegations of Paragraph 105 to the extent that they are inconsistent with the Loan Documents.

58. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 106 and, therefore, denies the allegations.

59. The TIC Investor Group admits the allegation of Paragraph 107. The TIC Investor Group avers that the payments were submitted under protest. The TIC Investor Group avers that it paid the reassessed monthly contributions for the applicable months in a good faith attempt to meet DRV's arbitrary, capricious, and unreasonable demands while attempting to resolve the dispute over DRV's actions. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 107.

60. The TIC Investor Group denies the allegation of Paragraph 108 because it is argumentative. The TIC Investor Group avers that it has continued to fund the Tax and Insurance Account in accordance with the terms of the Loan Agreement and that the Tax and Insurance Account was, at all times, sufficiently and/or excessively funded. The TIC Investor Group avers that DRV's reassessment of the contribution to the Tax and Insurance Account was arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 108.

61. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to the truth of the allegations in Paragraph 109 about DRV's beliefs and, therefore, denies the allegations. The TIC Investor Group avers that DRV knew or should have known that the increased monthly payment was not permitted under the Loan Agreement

and not justified under the circumstances. The TIC Investor Group avers that DRV's reassessment of the contribution to the Tax and Insurance Account was arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. The TIC Investor Group avers that the monthly payments have been maintained in compliance with the terms of the Loan Agreement. The TIC Investor Group also avers all insurance and tax obligations that are funded through the Tax and Insurance Account have been timely paid to date, contradicting DRV's "belief" that the balance in the Tax and Insurance Account is now or ever has been insufficient. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 109.

62. The TIC Investor Group denies the allegation of Paragraph 110 that it did not abide by its agreements with DRV and denies any so-called "shortfall," except to the extent The TIC Investor Group's operating funds were depleted by DRV's failure and refusal to timely refund excess Reserves. The TIC Investor Group does not have sufficient knowledge or information to form an opinion concerning the correctness of the allegation that DRV gave The TIC Investor Group "the benefit of the doubt" as to any alleged conduct; however, given DRV's exorbitant increases in the Reserve Accounts and its heavy-handed demands, the TIC Investor Group denies that it has been afforded any "benefit" by DRV. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 110.

63. The TIC Investor Group generally denies the allegations of Paragraph 111 because the allegations are argumentative. The TIC Investor Group denies the allegation that it was under an obligation to present any contemplated solution. The TIC Investor Group denies that its contributions to the Tax and Insurance Account resulted in any shortage. The TIC Investor Group does not have sufficient knowledge or information upon which to form an opinion as to

what DRV believed was "apparent." The TIC Investor Group avers that DRV knew or should have known that the increases were arbitrary, capricious, excessive, unreasonable, unsubstantiated, invalid, void, and unenforceable. The TIC Investor Group avers that the increases remain unsubstantiated despite The TIC Investor Group's repeated, reasonable requests for disclosure of the information DRV relied upon in demanding the increases. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 111.

64. The TIC Investor Group admits the allegation of Paragraph 112 that DRV provided a notice concerning the Reserve Accounts. The TIC Investor Group denies the implicit allegation that the notice was justified. The TIC Investor Group denies the implicit allegation that it was failing to make the full payments required under the Loan Agreement. The TIC Investor Group denies that any of its conduct has ever constituted an Event of Default. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 112.

65. The TIC Investor Group admits the allegation of Paragraph 113 that it did not make the improperly demanded payment. The TIC Investor Group avers that the demand was not permitted under the Loan Agreement and was not justified under the circumstances. The TIC Investor Group avers that the demand was arbitrary, capricious, excessive, unreasonable, unjustified, unsupported, invalid, void, and unenforceable. Moreover, when The TIC Investor Group requested a reassessment of the demanded payments and, if applicable, a refund or credit for the excessive overpayments, it was ignored by the Plaintiff. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 113.

66. The TIC Investor Group denies the allegation of Paragraph 114 that its failure to make the demanded payment constituted an Event of Default. The TIC Investor Group avers that the demand was not permitted under the Loan Agreement and was not justified under the

circumstances. The TIC Investor Group avers that the reassessed monthly contributions and the demand for payment were arbitrary, capricious, excessive, unreasonable, unjustified, unsupported, invalid, void, and unenforceable. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 114.

67. The TIC Investor Group denies the allegation of Paragraph 115. The TIC Investor Group avers that as of October 2012 all amounts due and payable under the Loan Agreement were current. The TIC Investor Group further avers that DRV is in possession of excess funds as a result of the unconscionable increases in the required monthly contributions to the Reserve Accounts and that, notwithstanding multiple requests, DRV's refusal to refund the excess funds or credit the funds to the debt service payments artificially manufactured the alleged default and prevented the TIC Investor Group from making the debt service payment. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 115.

68. The TIC Investor Group denies the allegation of Paragraph 116. The TIC Investor Group denies the allegation that an Event of Default has occurred. The TIC Investor Group avers that as of October 2012 all amounts due and payable under the Loan Agreement were current. The TIC Investor Group further avers that DRV is in possession of excess funds as a result of the unconscionable increases in the required monthly contributions to the Reserve Accounts and that DRV's refusal, notwithstanding multiple requests, to refund the excess funds or credit the funds to the debt service payments artificially fabricated the alleged default and prevented The TIC Investor Group from making the debt service payment. Moreover, the TIC Investor Group avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 116 to the extent that the allegations are inconsistent with the terms of the Loan

Agreement. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 116.

69. The TIC Investor Group admits the allegation of Paragraph 117 that DRV's counsel provided notice of its perceived Event of Default. The TIC Investor Group denies that an Event of Default ever occurred. Moreover, the TIC Investor Group avers that the Loan Documents speak for themselves and craves reference to the same for a precise statement of their terms and obligations. The TIC Investor Group denies the allegations of Paragraph 117 to the extent that the allegations are inconsistent with the terms of the Loan Documents. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 117.

70. The TIC Investor Group admits the allegation of Paragraph 118 that DRV has purported to accelerate the entire Debt. The TIC Investor Group denies the allegation that the acceleration of the Debt was permissible under the Loan Agreement and/or justified by the circumstances. The TIC Investor Group avers that the purported acceleration was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing exorbitant increases in the monthly contributions to the Reserve Accounts. Moreover, the TIC Investor Group avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 118 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 118.

71. The TIC Investor Group admits the allegation of Paragraph 119 that DRV has purported to exercise its right to apply the Default Rate of interest under the Loan Agreement.

The TIC Investor Group denies the allegation that the exercise of the right to apply the Default Rate of interest was permissible under the Loan Agreement or justified by the circumstances. The TIC Investor Group avers that the purported exercise of the right to apply the Default Rate of interest was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing exorbitant increases, without any exercise of reasonable discretion, in the monthly contribution to the Reserve Accounts. Moreover, the TIC Investor Group avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 119 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 119.

72. The TIC Investor Group admits the allegation of Paragraph 120 that DRV has improperly demanded that The TIC Investor Group terminate its property manager. The TIC Investor Group denies that the demand is permissible under the Loan Agreement or justified by the circumstances. The TIC Investor Group avers that the demand was arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing an exorbitant increase in the monthly contributions to the Reserve Accounts. Moreover, the TIC Investor Group avers that the Loan Agreement speaks for itself and craves reference to the same for a precise statement of its terms and obligations. The TIC Investor Group denies the allegations of Paragraph 120 to the extent that the allegations are inconsistent with the terms of the Loan Agreement. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 120.

73. The TIC Investor Group denies the allegations of Paragraph 121.

74. The TIC Investor Group admits the allegation of Paragraph 122 that it has failed or refused to comply with the improper demand to terminate the current management agreement. The TIC Investor Group denies that the demand is permissible under the Loan Agreement or justified by the circumstances. The TIC Investor Group avers that the demand is arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it can only be justified by the alleged default artificially manufactured by DRV through its commercially unreasonable conduct with respect to the Reserve Accounts. Moreover, the TIC Investor Group denies that Paragraph 122, or any other Paragraph in the Complaint, is supported by any affidavit. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 122.

75. The TIC Investor Group admits the allegation of Paragraph 123 that DRV has purported to terminate The TIC Investor Group's license to collect rents and profits generated by the Property. The TIC Investor Group denies that the purported termination is permissible under the Loan Agreement or justified by the circumstances. The TIC Investor Group avers that the purported termination was arbitrary, capricious, unreasonable, unjustified, unsupported, and invalid because it was based upon DRV's unconscionable and outrageous conduct in arbitrarily imposing an exorbitant increase in the monthly contributions to the Reserve Accounts. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 123.

76. The TIC Investor Group admits the allegation of Paragraph 124 that it has failed or refused to comply with the improper demand to terminate its license to collect rents and profits generated by the applicable Real Property. The TIC Investor Group denies that the purported termination is permissible under the Loan Agreement or justified by the circumstances. The TIC

Investor Group avers that the attempt to terminate the license is arbitrary, capricious, unreasonable, unjustified, unsupported, invalid, void, and unenforceable because it can only be justified by the alleged default artificially manufactured by DRV through its commercially unreasonable conduct with respect to the Reserve Accounts. The TIC Investor Group admits the allegation of Paragraph 124 that it continues to exercise control over the rents and profits from the Property. The TIC Investor Group avers that it does so in accordance with its rights under the Loan Documents and applicable law. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 124.

77. The TIC Investor Group denies the allegations in Paragraph 125. The TIC Investor Group avers that as of the date of the Complaint, all payments legitimately due and owing under the Loan Agreement were current. The TIC Investor Group demands an accounting of all funds received during the period of the dispute between the parties. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 125.

78. Paragraph 126 states a legal conclusion, to which no response is required. To the extent necessary, the TIC Investor Group denies the allegations included in Paragraph 126.

79. The TIC Investor Group avers that Paragraph 127 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 127.

80. The TIC Investor Group avers that Paragraph 128 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 128.

81. The TIC Investor Group avers that Paragraph 129 is a definitional statement or states a legal conclusion; therefore, no response is required. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 129.

82. The TIC Investor Group denies the allegations of Paragraph 130 that DRV has a right to recover a deficiency judgment in this action under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of such a claim for relief. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 130.

83. The TIC Investor Group admits the allegations of Paragraph 131 to the extent that the allegations are consistent with the applicable Guaranty Agreements. The TIC Investor Group avers that the Guaranty Agreements speak for themselves, and craves reference to the Guaranty Agreements for a precise statement of their terms and obligations. The TIC Investor Group denies the allegations of Paragraph 131 to the extent the allegations are inconsistent with the terms of the Guaranty Agreements.

84. The TIC Investor Group denies the allegations of Paragraph 132 that DRV has a right to recover any amount of damages in this action, let alone under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of any claim for relief. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 132.

85. The TIC Investor Group denies the allegations of Paragraph 133 that DRV has a right to recover any amount of damages in this action, let alone under any theory of Borrower's Recourse Liability. DRV has failed to allege any facts in support of any claim for relief. To the extent necessary, the TIC Investor Group denies all other allegations included in Paragraph 133.

AFFIRMATIVE DEFENSES

86. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

87. Failure to State a Claim. DRV's complaint fails to state a claim upon which relief can be granted. Accordingly, pursuant to South Carolina Rule of Civil Procedure 12(b)(6), DRV cannot recover against The TIC Investor Group, and its Complaint should be dismissed, with prejudice.

88. Equitable Defenses. Some or all of the claims asserted in the Complaint are barred by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands. Among others, DRV was the first party to breach the terms of the Loan Agreement by virtue of its arbitrary, capricious, unconscionable, and outrageous conduct with respect to the Reserve Accounts. Moreover, DRV took affirmative actions--e.g. withholding excess funds--that contributed to or caused the alleged default under the Loan Documents. Given these actions, DRV is barred from seeking the equitable, or any other remedies, prayed for in the Complaint.

89. Offset. The TIC Investor Group is entitled to an offset with respect to any damages, the existence of which are expressly denied, allegedly suffered by DRV. In particular, DRV's damages, if any, must be reduced by the value of any improvements to the Real Property at issue in this case or the increased value created by the TIC Investor Group, and the TIC Investor Group should be given a credit against the excessive amounts residing in the Reserve Accounts as of the filing of the Complaint.

90. Good Faith Dispute. There exists a bona fide, good faith dispute over the amounts, if any, due DRV; therefore, DRV may not recover attorneys' fees. Further, the TIC Investor Group has previously contacted DRV in an attempt to resolve this matter without recourse to legal

action. Nonetheless, DRV has unreasonably incurred attorneys' fees in prosecution of this action.

91. Failure to Mitigate. DRV has failed to mitigate its alleged damages, the existence of which are expressly denied. To the extent DRV seeks to recover these damages, DRV's reward must be reduced by that portion that it failed to mitigate.

92. Impossibility of Performance. The TIC Investor Group's performance under the Loan Agreement is excused under the doctrine of Impossibility of Performance. In particular, DRV's unconscionable and outrageous conduct in arbitrarily and capriciously imposing exorbitant increases in the monthly contributions to the Reserve Accounts rendered the TIC Investor Group's performance under the Loan Documents impossible. The exorbitant increases far exceed the rents and profits that the applicable Real Property is reasonably expected to generate.

93. Prevention of Performance. The TIC Investor Group's performance under the Loan Agreement is excused under the doctrine of Prevention of Performance. In particular, DRV's unconscionable and outrageous conduct in arbitrarily and capriciously imposing exorbitant increases in the monthly contributions to the Reserve Accounts and then failing to refund or credit excess funds toward the debt service, after multiple requests, improperly prevented the TIC Investor Group's performance under the Loan Documents.

94. Appraisal Rights. The TIC Investor Group gives notice of its intention to exercise its rights to demand an appraisal of the applicable Real Property in accordance with S.C. Code Ann. §§ 29-3-680. Section 29-3-680 provides that the right to an appraisal in a foreclosure action may be waived in the Loan Documents, if the language specified in the statute is used and the waiver appears "on a page containing the signature of the person making the waiver." The purported

waiver of appraisal rights is in the Loan Documents on page 15 of the Mortgage. In contravention of South Carolina law, the waiver appears on a page that is devoid of signatures.

95. Additional Affirmative Defenses.

a. The Plaintiff has failed to comply with its obligations under Administrative Orders 2009-05-22-01 and 2011-05-02-01 of the Supreme Court of South Carolina.

b. Some of the Exhibits to the Complaint appear to not be in final format.

c. To the extent any assignment alleged in the Complaint was not consummated in a manner that is consistent with applicable law, the applicable assignment is null and void.

d. To the extent any Loan Document was not properly executed, the applicable Loan Document is null and void.

e. To the extent any security interest alleged in the Complaint was not properly memorialized and/or perfected in a manner that is consistent with applicable law, the applicable security interest is null and void. Specifically, the UCC Financial Statements could not be considered fixture filings and could not be perfected by filing with the Richland County Register of Deeds.

f. Given the nature of the facts as alleged, together with the Counterclaims articulated below, any reference to the Master in Equity for Richland County would be premature at this juncture. Rather, and consistent with applicable South Carolina law, all proper issues to be presented to a jury should be tried first in the Court of Common Pleas, and then, to the extent necessary, any remaining issues so referred thereafter.

g. Given the nature of the facts as alleged above, together with the Counterclaims articulated below, the appointment of any Receiver would not be appropriate in this matter.

h. Doctrine of first material breach.

i. Unconscionability.

j. The TIC Investor Group has a right of recoupment with regard to the excess funds currently residing in the Reserve Accounts pursuant to S.C. Code Ann. § (a)(2), and other applicable law.

96. Reservation of Defenses. To the extent permitted by law, the TIC Investor Group reserves the right to amend and supplement its affirmative defenses to include any applicable defenses of which it is not presently aware. The TIC Investor Group has not had an opportunity to conduct a full investigation or to engage in adequate discovery concerning DRV's allegations. In this regard, DRV's continued refusal to disclose any substantiation for its decision to exponentially increase the funding levels for the Reserve Accounts is particularly noteworthy. Accordingly, the TIC Investor Group reserves the right to amend this Answer to assert any subsequently discovered defenses.

NOW, THEREFORE, having responded to the allegations of the Complaint and raised applicable defenses, the TIC Investor Group sues DRV for the following Counterclaims.

COUNTERCLAIMS

97. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

98. On December 14, 2007, the TIC Investor Group and Greenwich Capital entered into certain Loan Documents, including, among others, a Loan Agreement, a Promissory Note, a Mortgage, an Assignment of Leases and Rents, and other related documents.

99. DRV is the current holder of the Loan Documents.

100. The Loan Agreement established various Reserve Accounts into which the TIC Investor Group was required to make monthly contributions, including, in particular, a Tax and Insurance Account (Section 3.3, p. 23), a Capital Reserve Account (Section 3.4, p. 24), and a Rollover Reserve Account (Section 3.5, p. 24).

101. The Tax and Insurance Account provision requires the TIC Investor Group to pay DRV one-twelfth of the taxes and insurance premiums that DRV estimates will be payable during the next year in order to accumulate sufficient funds to pay the taxes and insurance premiums at least 30 days before they are due.

102. If DRV "determines in its reasonable judgment" that the funds in the Tax and Insurance Account will be insufficient to pay, or in excess of, the taxes and premiums due, DRV may increase or decrease the monthly contribution the TIC Investor Group is required to pay.

103. Under Section 5.2 of the Loan Agreement (p. 35), the TIC Investor Group is authorized to pay the taxes and insurance premiums directly and deliver receipts to DRV for reimbursement.

104. The Capital Reserve Account provision requires the TIC Investor Group to make a monthly payment to the Reserve Account in the amount of $5,249.

105. The Capital Reserve Account provision allows DRV, "upon 30 days' prior notice," to reassess the amount of the monthly payment from time to time in its "reasonable discretion," based upon its "then current underwriting standards."

106. The Capital Reserve Account is a custodial account.

107. The Capital Reserve Account is maintained by DRV for the benefit of the TIC Investor Group.

108. The Rollover Reserve Account provision required the TIC Investor Group to make an initial deposit in the amount of $750,000 to fund Approved Leasing Expenses.

109. Approved Leasing Expenses are defined as "actual out-of-pocket expenses incurred by Borrower and payable to third parties that are not Affiliates of Borrower or Guarantor in leasing space at the Property pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (i) are (A) specifically approved by Lender in connection with approving the applicable Lease, (B) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not require Lender's approval under the Loan Documents, or (C) otherwise approved by Lender, which approval shall be unreasonably withheld or delayed, and (ii) are substantiated by executed Lease documents and brokerage agreements."

110. Beginning on the thirty-eighth payment date, the Rollover Reserve Account provision required the TIC Investor Group to begin making monthly payments in the amount of $21,086.50.

111. The Rollover Reserve Account has a minimum balance of $250,000.

112. The Rollover Reserve Account provision allows DRV to increase or decrease the TIC Investor Group's monthly payment, if DRV determines "in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses." Additionally, Approved Leasing

Expenses is defined as actual out-of-pocket expenses incurred by Defendants in leasing space at the property.

113. The Rollover Reserve Account is a custodial account.

114. The Rollover Reserve Account is maintained by DRV for the benefit of the TIC Investor Group.

115. When DRV reassessed the Rollover Reserve Account, the TIC Investor Group had not incurred any out-of-pocket expenses in leasing space at the Property.

116. When DRV reassessed the Rollover Reserve Account, no Approved Leasing Expenses were due or to become due in such an amount that would have decreased the balance of the Rollover Reserve Account below the minimum required by the Loan Agreement.

117. Greenwich Capital, the Original Lender, never reassessed the Capital Reserve Account or the Rollover Reserve Account.

118. Greenwich Capital provided the TIC Investor Group monthly statements concerning the debt service and the Reserve Accounts.

119. Royal Bank of Scotland ("RBS"), the first assignee of the Loan Documents, never reassessed the Capital Reserve Account or the Rollover Reserve Account.

120. RBS provided the TIC Investor Group with monthly statements concerning the debt service and the Reserve Accounts.

121. There was never a shortage in either the Capital Reserve Account or the Rollover Reserve Account while Greenwich Capital held the Loan Documents.

122. There was never a shortage in either the Capital Reserve Account or the Rollover Reserve Account while RBS held the Loan Documents.

123. In July 2011, DRV notified the TIC Investor Group of the reassessment of the Capital Reserve Account and the Rollover Reserve Account.

124. At that time, and without proper justification, DRV reassessed the monthly payment for the Capital Reserve Account from the original amount of $5,249 to $54,476.34.

125. The reassessment of the Capital Reserve Account constituted a one-time increase of 1,037%.

126. At that time, and without proper justification, DRV also reassessed the monthly payment for the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91.

127. The reassessment of the Rollover Reserve Account constituted a one-time increase of 756%.

128. The TIC Investor Group disputed the validity of the reassessments to the Capital Reserve Account and the Rollover Reserve Account, and sought, on multiple occasions, justification and substantiation, under applicable provisions of the Loan Documents, in connection with the same.

129. As a gesture of good faith while seeking a resolution to the dispute, the TIC Investor Group voluntarily added $736,000 to the Reserve Accounts.

130. The third-party property manager requested certain capital improvements in 2011 and 2012, but 95% of those requests were not undertaken. In its Complaint, DRV admitted that it based its reassessment of the Reserve Accounts on these mostly unfulfilled requests.

131. In April 2012, DRV notified the TIC Investor Group of the reassessment of the Tax and Insurance Account.

132. DRV claimed the reassessment was to correct a projected shortfall in the Tax and Insurance Account.

133. The Tax and Insurance payment was reassessed on the assumption that insurance premiums would increase at least 46% from the previous years' premiums.

134. The Tax and Insurance monthly payment was reassessed from $722 to $5,272.97.

135. The reassessment of the Tax and Insurance payment constituted a one-time increase of 630%.

136. On June 11, 2012, Ronald Guerena of Marsh Risk and Insurance Service advised DRV that the TIC Investor Group's premiums were not expected to increase as significantly as DRV purported.

137. At that time, Mr. Guerena advised DRV that the TIC Investor Group's monthly payment should be $3,100.

138. As required by the Loan Agreement, the TIC Investor Group asked DRV to justify and substantiate the reasonableness of all reassessments, including a detailed written explanation of the reassessments and the underwriting guidelines according to which the reassessments were completed. These requests were generally ignored.

139. The only explanation provided by DRV in this regard relates to the Capital Reserve Account. DRV explained that the reassessment to the Capital Reserve Account was based upon the capital expenditure recommendations from the third-party property manager, which was submitted by the property manager directly to DRV without The TIC Investor Group's approval or input. Moreover, approximately 95% of the recommended expenditures never came to fruition.

140. The TIC Investor Group avers that the reassessments were calculated and imposed arbitrarily and capriciously. Moreover, they were apparently based on a certain capital improvement requests that were chiefly unfulfilled and not approved or adopted by The TIC Investor Group.

141. The TIC Investor Group avers that the reassessments were arbitrary, capricious, exorbitant, unreasonable, unconscionable, invalid, void, and unenforceable.

142. Moreover, the TIC Investor Group avers that DRV's demands for payment have been heavy-handed, unconscionable, and outrageous.

143. As a result of the arbitrary and capricious reassessments, DRV is now in possession of excess funds of the TIC Investor Group comprised of any and all amounts due under the Loan Documents in an amount believed to exceed $500,000 when the Complaint was filed.

144. The TIC Investor Group is entitled to a refund of the erroneous and improper payments to the Reserve Accounts. Alternatively, the TIC Investor Group is entitled to have the excess funds in the Reserve Accounts credited to the debt service. When such requests were made to DRV, they were ignored.

145. DRV demanded that the TIC Investor Group terminate its property manager.

146. DRV claims a right to demand termination as a result of the TIC Investor Group's improperly alleged defaults.

147. The alleged defaults upon which DRV relies in demanding termination of the property manager were fabricated by DRV through manipulation of the reassessment process.

148. During this dispute over funding for the Reserve Accounts, the TIC Investor Group has repeatedly requested DRV to reassess the Reserve Account payments, account for all funds

paid by the TIC Investor Group, and provide substantiation (including a review of applicable underwriting guidelines) for the reassessments. These requests have been ignored.

149. Notwithstanding the provisions of the Loan Documents and multiple requests from the TIC Investor Group, DRV has not reassessed the Reserve Accounts.

150. Notwithstanding the provisions of the Loan Documents and multiple requests from the TIC Investor Group, DRV has not accounted for all funds paid by the TIC Investor Group.

151. Notwithstanding the provisions of the Loan Documents and multiple requests from the TIC Investor Group, DRV has not provided substantiation for the reassessments.

152. The course of business between the TIC Investor Group and the holder of the Loan Documents, currently includes the provision of monthly statements of the debt service and Reserve Account balances since then.

153. DRV continued that course of business until this dispute arose.

154. DRV has stopped providing monthly statements of the debt service and Reserve Account balances.

FIRST COUNTERCLAIM: ACCOUNTING

155. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

156. DRV is required by the Loan Documents and applicable law to provide an accounting of all amounts received from or on behalf of the TIC Investor Group and all amounts claimed to be due and accruals thereof. The TIC Investor Group expressly demands that Plaintiff make such an accounting.

SECOND COUNTERCLAIM: BREACH OF CONTRACT

157. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

158. The Loan Documents created a valid and binding contract between DRV and the TIC Investor Group. DRV has violated the terms of that contract and breached the implied covenant of good faith and fair dealing by, among other things:

(a) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Capital Reserve Account from the original amount of $5,249 to $54,476.34, which represents a one-time increase of 1,037%, and demanding payment on 60 days' notice.

(b) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91, which represents a one-time increase of 756%, and demanding payment on 60 days' notice.

(c) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Tax and Insurance Account from the original amount of $722 to $5,272.97, which represents a one-time increase of 630%, and demanding payment on 60 days' notice.

(d) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it rendered the TIC Investor Group's performance under the contract impossible, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(e) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it has

prevented the TIC Investor Group's performance under the contract, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(f) Refusing to provide justification and substantiation of the reassessments--including requests for review of applicable underwriting guidelines.

(g) Refusing to provide monthly statements of the debt service and Reserve Account balances.

(h) Accepting excess payments for the Reserve Accounts and then refusing to refund the excess payments or, alternatively, refusing to credit the payments to the debt service.

(i) Declaring an Event of Default and invoking the Default provisions when no Event of Default has occurred.

(j) Manipulating the process of reassessment of Reserve Accounts to manufacture an Event of Default.

159. The TIC Investor Group is entitled to damages against DRV for these breaches in an amount to be proven at trial.

THIRD COUNTERCLAIM: BREACH OF FIDUCIARY DUTY

160. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

161. The Loan Documents created a confidential and fiduciary relationship between DRV and the TIC Investor Group, especially with respect to the maintenance and reassessment of the Reserve Accounts (which are custodial accounts), and other licensing agreements. DRV has violated its fiduciary duty to the TIC Investor Group by, among other things:

(a) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Capital Reserve Account from the original amount of $5,249 to $54,476.34, which represents a one-time increase of 1,037%, and demanding payment on 60 days' notice.

(b) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Rollover Reserve Account from the original amount of $21,086.50 to $159,472.91, which represents a one-time increase of 756%, and demanding payment on 60 days' notice.

(c) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payment to the Tax and Insurance Account from the original amount of $722 to $5,272.97, which represents a one-time increase of 630%, and demanding payment on 60 days' notice.

(d) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it rendered the TIC Investor Group's performance under the contract impossible, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(e) Arbitrarily and capriciously reassessing the TIC Investor Group's monthly payments to the Reserve Accounts and imposing such an exorbitant amount that it has prevented the TIC Investor Group's performance under the contract, given the rents and profits that the applicable Real Property is reasonably expected to generate.

(f) Refusing to provide justification and substantiation of the reassessments--including requests for review of applicable underwriting guidelines.

(g) Refusing to provide monthly statements of the debt service and Reserve Account balances.

(h) Accepting excess payments for the Reserve Accounts and then refusing to refund the excess payments or, alternatively, refusing to credit the payments to the debt service.

(i) Declaring an Event of Default and invoking the Default provisions when no Event of Default has occurred.

(j) Manipulating the process of reassessment of Reserve Accounts to manufacture an Event of Default.

162. The TIC Investor Group is entitled to damages against DRV for these breaches in an amount to be proven at trial.

FOURTH COUNTERCLAIM: DECLARATORY JUDGMENT

163. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

164. DRV has sought the entry of a deficiency judgment against The TIC Investor Group and the other Defendants.

165. The TIC Investor Group seeks a declaratory judgment pursuant to the terms of S.C. Code Ann. §§ 15-53-10 et seq.

166. An actual, justiciable controversy and dispute exists between DRV and The TIC Investor Group.

167. South Carolina law provides that:

SECTION 29-3-680. Application for order of appraisal.

(A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within

thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-021(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

> "The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY."
>
> ***This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underline, in capital letters, or disclosed in another prominent manner.*** (Emphasis added).

168. The purported waiver of appraisal rights is contained on page 15 of the Mortgage.

169. In contravention of South Carolina law, there are no signatures found on that page.

170. The TIC Investor Group, therefore, respectfully requests that the Court make the following judicial declarations:

a. That no Defendant has waived its appraisal rights provided by South Carolina law; and

b. That, as such, and if it ever becomes applicable, any Defendant may exercise its appraisal rights in accordance with SC Code §§ 29-3-680 et seq.

FIFTH COUNTERCLAIM: VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

171. The allegations, denials, and averments in the previous paragraphs are incorporated herein as if repeated verbatim.

172. Plaintiff and Defendant are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

173. Plaintiff was engaged in commerce within the meaning of Code Section 39-5-10(b).

174. Plaintiff's actions described hereinabove constitute unfair, and deceptive practices within the meaning of Code Section 39-5-20(a).

175. Plaintiff's acts are capable of repetition.

176. Plaintiff's conduct affects the public interest of South Carolina.

177. Plaintiff knew or reasonably should have known its conduct violated the South Carolina Unfair Trade Practices Act.

178. As a direct, foreseeable, and proximate result of Plaintiff's unfair and deceptive practices, the TIC Investment Group suffered, and continues to suffer, actual damages as specified above.

179. The TIC Investment Group is entitled to recover their actual damages, which amount should be trebled, together with interest and attorney's fees.

WHEREFORE, in consideration of the preceding Answer, Affirmative Defenses, and Counterclaims, the TIC Investor Group prays that a jury be empaneled to try the appropriate issues herein, and that this Honorable Court enter judgment against DRV as follows:

A. Dismissing DRV's Complaint, with prejudice;

B. Assessing all costs associated with this action against DRV, and awarding the TIC Investor Group recovery of its reasonable attorneys' fees and expenses pursuant to S.C. Code Ann. § 39-5-10;

C. Ordering DRV to provide the TIC Investor Group with an accounting of all payments received for debt service and Reserve Accounts during the period of time in which it has been the holder of the Loan Documents;

D. Awarding the TIC Investor Group a judgment against DRV for treble damages. Those damages to be trebled shall include: all amounts found to be caused by Plaintiff's unfair and deceptive trade practices;

E. Declaring that the waiver appraisal rights in the Loan Documents is contrary to South Carolina law and, therefore, ineffective and unenforceable; and that any Defendant not a signatory to the waiver be entitled to demand an appraisal; and

F. Awarding such other and further relief as deemed just and proper under the circumstances.

RESPECTFULLY SUBMITTED:

This 8th day of January, 2013

Tucker S. Player
Player Law Firm
P.O. Box 21005
Columbia, SC 29221
Ph: (803)772-8008
Fx: (803)772-8037
Email : Tucker@playerlawfirm.com

ATTORNEY FOR THE TIC INVESTOR GROUP

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC,

Plaintiff,

v.

FONTAINE BUSINESS PARK, LLC;
FONTAINE BUSINESS PARK 2, LLC;
FONTAINE BUSINESS PARK 3, LLC;
FONTAINE BUSINESS PARK 4, LLC;
FONTAINE BUSINESS PARK 5, LLC;
FONTAINE BUSINESS PARK 6, LLC;
FONTAINE BUSINESS PARK 7, LLC;
FONTAINE BUSINESS PARK 8, LLC;
FONTAINE BUSINESS PARK 9, LLC;
FONTAINE BUSINESS PARK 10, LLC;
FONTAINE BUSINESS PARK 11, LLC;
FONTAINE BUSINESS PARK 12, LLC;
FONTAINE BUSINESS PARK 13, LLC;
FONTAINE BUSINESS PARK 14, LLC;
FONTAINE BUSINESS PARK 15, LLC;
FONTAINE BUSINESS PARK 16, LLC;
FONTAINE BUSINESS PARK 17, LLC;
FONTAINE BUSINESS PARK 18, LLC;
FONTAINE BUSINESS PARK 19, LLC;
FONTAINE BUSINESS PARK 20, LLC;
FONTAINE BUSINESS PARK 21, LLC;
FONTAINE BUSINESS PARK 22, LLC;
FONTAINE BUSINESS PARK 23, LLC;
FONTAINE BUSINESS PARK 24, LLC;
FONTAINE BUSINESS PARK 25, LLC;
FONTAINE BUSINESS PARK 26, LLC;
FONTAINE BUSINESS PARK 27, LLC;
FONTAINE BUSINESS PARK 28, LLC;
FONTAINE BUSINESS PARK 29, LLC;
FONTAINE BUSINESS PARK 30, LLC;
FONTAINE BUSINESS PARK 31, LLC;

Defendants.

PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF DEFENDANT FONTAINE BUSINESS PARK, LLC

Plaintiff DRV Fontaine, LLC ("DRV" or "Plaintiff") hereby replies generally to the Answer, Affirmative Defenses and Counterclaims (the "Counterclaim") of the Defendant Fontaine Business Park, LLC ("Fontaine" or "Defendant") that each and every allegation set forth in the Counterclaim that is not expressly and specifically admitted herein is denied, and expressly and specifically replies as follows:

FOR A FIRST DEFENSE

1. Plaintiff denies the allegations and responses contained in paragraphs 1 through 103 of the Counterclaim to the extent they are in any way inconsistent with the allegations set forth in the Complaint.

FOR A SECOND DEFENSE

2. In response to the allegations contained in paragraphs 104 through 114 of the Counterclaim, which are identified as affirmative defenses, Plaintiff denies those allegations and denies that Fontaine is entitled to any relief.

3. In response to the allegations contained in paragraph 115 of the Counterclaim, Plaintiff incorporates by reference herein the responses and assertions set forth above and in the Complaint.

4. Plaintiff admits the allegations contained in paragraphs 116 and 117 of the Counterclaim.

5. Plaintiff admits the allegations contained in paragraph 118 of the Counterclaim.

6. Plaintiff admits the allegations contained in paragraph 119 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement dated as of December 14, 2007 ("Loan Agreement") Plaintiff denies the remaining allegations of paragraph 119 of the Counterclaim.

7. Plaintiff admits the allegations contained in paragraph 120 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 120 of the Counterclaim.

8. Plaintiff admits the allegations contained in paragraph 121 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 121 of the Counterclaim.

9. Plaintiff admits the allegations contained in paragraph 122 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 122 of the Counterclaim. Further responding, Plaintiff asserts that the monthly payment into the Capital Reserve Account was subject to change as set forth in the Loan Agreement.

10. Plaintiff admits the allegations contained in paragraph 123 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 123 of the Counterclaim.

11. Plaintiff admits the allegations contained in paragraph 124 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 124 of the Counterclaim.

12. Plaintiff admits the allegations contained in paragraph 125 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 125 of the Counterclaim.

13. Plaintiff admits the allegations contained in paragraph 126 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 126 of the Counterclaim.

14. Plaintiff admits the allegations contained in paragraph 127 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 127 of the Counterclaim.

15. Plaintiff admits the allegations contained in paragraph 128 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 128 of the Counterclaim.

16. Plaintiff admits the allegations contained in paragraph 129 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 129 of the Counterclaim.

17. Plaintiff admits the allegations contained in paragraph 130 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 130 of the Counterclaim.

18. Plaintiff admits the allegations contained in paragraph 131 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 131 of the Counterclaim.

19. Plaintiff admits the allegations contained in paragraph 132 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 132 of the Counterclaim.

20. Plaintiff admits the allegations contained in paragraph 133 of the Counterclaim only to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 133 of the Counterclaim. Further responding, Plaintiff lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph

133 of the Counterclaim that allege that Fontaine had not incurred any out of pocket expenses in leasing the space at the Property, and those allegations are, therefore, denied.

21. Plaintiff denies the allegations of paragraph 134 of the Counterclaim to the extent they are based upon the premise that increases in the monthly payment to the Rollover Reserve Account are based solely on Approved Leasing Expenses. Plaintiff denies the remaining allegations of paragraph 134 of the Counterclaim.

22. Plaintiff admits the allegations contained in paragraph 135 of the Counterclaim.

23. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 of the Counterclaim and, therefore, denies those allegations.

24. Plaintiff admits the allegations contained in paragraph 137 of the Counterclaim.

25. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 of the Counterclaim and, therefore, denies those allegations.

26. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139 of the Counterclaim and, therefore, denies those allegations.

27. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 140 of the Counterclaim and, therefore, denies those allegations.

28. Plaintiff admits the allegations contained in paragraph 141 of the Counterclaim.

29. Plaintiff denies the allegations of paragraph 142 of the Counterclaim.

30. Plaintiff denies the allegations of paragraph 143 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Capital Reserve Account was increased significantly in order to meet the projected needs set forth in Fontaine's Capital Budget.

31. Plaintiff denies the allegations of paragraph 144 of the Counterclaim.

32. Plaintiff denies the allegations of paragraph 145 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Capital Reserve Account was increased significantly in order to meet the projected needs set forth in Fontaine's Capital Budget.

33. Plaintiff denies the allegations of paragraph 146 of the Counterclaim.

34. Plaintiff admits the allegations of paragraph 147 of the Counterclaim to the extent they allege that Fontaine paid the increased monthly payments into the Capital Reserve Account and the Rollover Reserve Account for approximately three months and then unilaterally stopped making the payments – reverting back to the original payment amounts without the consent of Plaintiff. Plaintiff denies the allegations of paragraph 147 of the Counterclaim to the extent they allege that the increased payments were made as a gesture of good faith. Plaintiff denies the remaining allegations of paragraph 147 of the Counterclaim.

35. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 148 of the Counterclaim and, therefore, denies those allegations. Further responding, Plaintiff asserts that some of the projected and requested capital improvements were necessary to maintain the Property but have been deferred by Fontaine to the detriment of Plaintiff's collateral.

36. Plaintiff admits the allegations of paragraph 149 of the Counterclaim.

37. Plaintiff admits the allegations of paragraph 150 of the Counterclaim to the extent they allege that Plaintiff believed that the reassessment was necessary to cover the projected taxes and insurance for 2012. Plaintiff denies the remaining allegations of paragraph 150 of the Counterclaim.

38. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 151 of the Counterclaim and, therefore, denies those allegations. Further responding, Plaintiff admits that the Tax and Insurance Reserve Account payment was reassessed based upon an reasonably anticipated increase in those costs.

39. Plaintiff denies the allegations of paragraph 152 of the Counterclaim.

40. Plaintiff denies the allegations of paragraph 153 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Tax and Insurance Account payments were increased in order to meet the projected taxes and insurance for the Property.

41. Responding to the allegations of paragraph 154 of the Counterclaim, Plaintiff craves reference to the correspondence from Mr. Guerena of Marsh Risk & Insurance Services and denies any allegations that are inconsistent therewith.

42. Responding to the allegations of paragraph 155 of the Counterclaim, Plaintiff craves reference to the correspondence from Mr. Guerena of Marsh Risk & Insurance Services and denies any allegations that are inconsistent therewith.

43. Plaintiff denies the allegations of paragraph 156 of the Counterclaim.

44. Plaintiff denies the allegations contained in paragraph 157 of the Counterclaim, except to the extent they allege that the increases in the Capital Reserve Account payments was made to cover the capital improvements projected and requested by the on site property manager in

the Capital Budget. Further responding, Plaintiff asserts that the projected and requested capital improvements were necessary to maintain the Property but have been deferred by Fontaine to the detriment of Plaintiff's collateral.

45. Plaintiff denies the allegations contained in paragraph 158 of the Counterclaim.

46. Plaintiff denies the allegations contained in paragraph 159 of the Counterclaim.

47. Plaintiff denies the allegations contained in paragraph 160 of the Counterclaim.

48. Plaintiff denies the allegations contained in paragraph 161 of the Counterclaim.

49. Plaintiff denies the allegations contained in paragraph 162 of the Counterclaim.

50. Plaintiff admits the allegations contained in paragraph 163 of the Counterclaim.

51. Plaintiff admits the allegations contained in paragraph 164 of the Counterclaim, except to the extent they allege that the defaults are "improperly alleged," which is denied.

52. Plaintiff denies the allegations contained in paragraph 165 of the Counterclaim.

53. Plaintiff denies the allegations contained in paragraph 166 of the Counterclaim.

54. Plaintiff admits the allegations contained in paragraph 167 of the Counterclaim to the extent they allege that Plaintiff has not reassessed the monthly payments to be made to the Reserve Accounts. Plaintiff denies the remaining allegations contained in paragraph 167 of the Counterclaim.

55. Plaintiff denies the allegations contained in paragraph 168 of the Counterclaim.

56. Plaintiff denies the allegations contained in paragraph 169 of the Counterclaim.

57. Plaintiff denies the allegations contained in paragraph 170 of the Counterclaim.

58. Plaintiff denies the allegations contained in paragraph 171 of the Counterclaim.

59. Plaintiff admits the allegations contained in paragraph 172 of the Counterclaim.

FOR A THIRD DEFENSE AS TO THE FIRST COUNTERCLAIM

60. In response to the allegations contained in paragraph 173 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

61. Plaintiff denies the allegations contained in paragraph 174 of the Counterclaim.

FOR A FOURTH DEFENSE AS TO THE SECOND COUNTERCLAIM

62. In response to the allegations contained in paragraph 175 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

63. Plaintiff admits the allegations contained in paragraph 176 of the Counterclaim to the extent they allege that the Loan Documents created a valid and binding contract between DRV and Fontaine. Plaintiff denies the remaining allegations contained in paragraph 176 of the Counterclaim.

64. Plaintiff denies the allegations contained in paragraph 177 of the Counterclaim.

FOR A FIFTH DEFENSE AS TO THE THIRD COUNTERCLAIM

65. In response to the allegations contained in paragraph 178 of the Counterclaim, Plaintiff reaffirms and reiterates the response set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

66. Plaintiff denies the allegations contained in paragraph 179 of the Counterclaim.

67. Plaintiff denies the allegations contained in paragraph 180 of the Counterclaim.

FOR A SIXTH DEFENSE AS TO THE FOURTH COUNTERCLAIM

68. In response to the allegations contained in paragraph 181 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

69. Plaintiff denies the allegations contained in paragraph 182 of the Counterclaim.

70. Plaintiff denies the allegations contained in paragraph 183 of the Counterclaim.

FOR A SEVENTH DEFENSE AS TO THE FIFTH COUNTERCLAIM

71. In response to the allegations contained in paragraph 184 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

72. Plaintiff denies the allegations contained in paragraph 185 of the Counterclaim.

73. Plaintiff denies the allegations contained in paragraph 186 of the Counterclaim.

FOR AN EIGHTH DEFENSE AS TO THE SIXTH COUNTERCLAIM

74. In response to the allegations contained in paragraph 187 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

75. Plaintiff denies the allegations contained in paragraph 188 of the Counterclaim.

76. Plaintiff denies the allegations contained in paragraph 189 of the Counterclaim.

FOR A NINTH DEFENSE AS TO THE SEVENTH COUNTERCLAIM

77. In response to the allegations contained in paragraph 190 of the Counterclaim, Plaintiff reaffirms and reiterates the response set forth in paragraphs 1 through 59 above as if set forth verbatim.

78. Plaintiff denies the allegations contained in paragraph 191 of the Counterclaim.

79. Plaintiff denies the allegations contained in paragraph 192 of the Counterclaim.

80. Plaintiff denies the allegations contained in paragraph 193 of the Counterclaim.

81. Plaintiff denies the allegations contained in paragraph 194 of the Counterclaim.

82. Plaintiff denies the allegations contained in paragraph 195 of the Counterclaim.

FOR A TENTH DEFENSE AS TO THE EIGHTH COUNTERCLAIM

83. In response to the allegations contained in paragraph 196 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

84. Plaintiff admits the allegations contained in paragraph 197 of the Counterclaim only to the extent it is consistent with the allegations in Plaintiff's Complaint.

85. The allegations contained in paragraph 198 of the Counterclaim do not require a response; however, to the extent a response is required, those allegataions are denied. Further responding, Plaintiff denies that Fontaine is entitled to a declaratory judgment.

86. Plaintiff denies the allegations contained in paragraph 199 of the Counterclaim.

87. Plaintiff denies the allegations contained in paragraph 200 of the Counterclaim because they state a legal conclusion. Plaintiff craves reference to the statute recited for the accuracy of the allegations in the Counterclaim.

88. Plaintiff admits the allegations contained in paragraph 201 of the Counterclaim.

89. The allegations contained in paragraph 202 of the Counterclaim state a legal conclusion and are, therefore, denied.

90. The allegations contained in paragraph 203 of the Counterclaim do not require a response; however, to the extent they do require a response, they are denied.

FOR AN ELEVENTH DEFENSE

91. Some or all of Defendant's "Counterclaims" fail to state facts sufficient to constitute a cause of action.

92. Therefore, each such "Counterclaim" should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A TWELFTH DEFENSE

93. Some or all of Defendant's "Counterclaims" are barred based upon the defense of waiver.

94. To the extent any of Fontaine's "Counterclaims" are based upon the alleged "arbitrary and capricious" increase of the reserve accounts, which is expressly denied by Plaintiff, Fontaine has waived such defenses by voluntarily paying the full increased reserve account payments for some period of months without complaining or objecting to the increases.

95. Therefore, any such "Counterclaims" should be dismissed.

WHEREFORE, having fully set forth its responses to the Counterclaim of the Defendants, Plaintiff prays that this Honorable Court award the following relief:

A. Awarding all of the relief sought in Plaintiff's Complaint;

B. Dismissing with prejudice all claims set forth in the Answer, Affirmative Defenses and Counterclaims; and

C. Such other and further relief as the Court deems just and proper.

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: _____
Paul D. Harrill (SC Bar No. 15268)
Attorneys for the Plaintiff

January 7, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC,

Plaintiff,

v.

FONTAINE BUSINESS PARK, LLC;
FONTAINE BUSINESS PARK 2, LLC;
FONTAINE BUSINESS PARK 3, LLC;
FONTAINE BUSINESS PARK 4, LLC;
FONTAINE BUSINESS PARK 5, LLC;
FONTAINE BUSINESS PARK 6, LLC;
FONTAINE BUSINESS PARK 7, LLC;
FONTAINE BUSINESS PARK 8, LLC;
FONTAINE BUSINESS PARK 9, LLC;
FONTAINE BUSINESS PARK 10, LLC;
FONTAINE BUSINESS PARK 11, LLC;
FONTAINE BUSINESS PARK 12, LLC;
FONTAINE BUSINESS PARK 13, LLC;
FONTAINE BUSINESS PARK 14, LLC;
FONTAINE BUSINESS PARK 15, LLC;
FONTAINE BUSINESS PARK 16, LLC;
FONTAINE BUSINESS PARK 17, LLC;
FONTAINE BUSINESS PARK 18, LLC;
FONTAINE BUSINESS PARK 19, LLC;
FONTAINE BUSINESS PARK 20, LLC;
FONTAINE BUSINESS PARK 21, LLC;
FONTAINE BUSINESS PARK 22, LLC;
FONTAINE BUSINESS PARK 23, LLC;
FONTAINE BUSINESS PARK 24, LLC;
FONTAINE BUSINESS PARK 25, LLC;
FONTAINE BUSINESS PARK 26, LLC;
FONTAINE BUSINESS PARK 27, LLC;
FONTAINE BUSINESS PARK 28, LLC;
FONTAINE BUSINESS PARK 29, LLC;
FONTAINE BUSINESS PARK 30, LLC;
FONTAINE BUSINESS PARK 31, LLC;

Defendants.

PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF DEFENDANTS FONTAINE BUSINESS PARK 2 - 31

Plaintiff DRV Fontaine, LLC ("DRV" or "Plaintiff") hereby replies generally to the Answer and Counterclaims of Defendants Fontaine Business Park 2-31 (the "Counterclaim") of the Defendants Fontaine Business Park 2, LLC, Fontaine Business Park 3, LLC, Fontaine Business Park 4, LLC, Fontaine Business Park 5, LLC, Fontaine Business Park 6, LLC, Fontaine Business Park 7, LLC, Fontaine Business Park 8, LLC, Fontaine Business Park 9, LLC, Fontaine Business Park 10, LLC, Fontaine Business Park 11, LLC, Fontaine Business Park 12, LLC, Fontaine Business Park 13, LLC, Fontaine Business Park 14, LLC, Fontaine Business Park 15, LLC, Fontaine Business Park 16, LLC, Fontaine Business Park 17, LLC, Fontaine Business Park 18, LLC, Fontaine Business Park 19, LLC, Fontaine Business Park 20, LLC, Fontaine Business Park 21, LLC, Fontaine Business Park 22, LLC, Fontaine Business Park 23, LLC, Fontaine Business Park 24, LLC, Fontaine Business Park 25, LLC, Fontaine Business Park 26, LLC, Fontaine Business Park 27, LLC, Fontaine Business Park 28, LLC, Fontaine Business Park 29, LLC, Fontaine Business Park 30, LLC, and Fontaine Business Park 31, LLC, (collectively "Fontaines 2-31" or "TIC Investors") that each and every allegation set forth in the Counterclaim that is not expressly and specifically admitted herein is denied, and expressly and specifically replies as follows:

FOR A FIRST DEFENSE

1. Any allegations set forth in paragraphs 1 through 85 of the Counterclaim do not require a response or reply; however, Plaintiff denies the allegations and responses contained in paragraphs 1 through 85 of the Counterclaim to the extent they are in any way inconsistent with the allegations set forth in the Complaint.

FOR A SECOND DEFENSE

2. In response to the allegations contained in paragraphs 86 through 96 of the Counterclaim, which are identified as affirmative defenses, Plaintiff denies those allegations and denies that Fontaines 2-31 are entitled to any relief.

3. In response to the allegations contained in paragraph 97 of the Counterclaim, Plaintiff incorporates by reference herein the responses and assertions set forth above and in the Complaint.

4. Plaintiff admits the allegations contained in paragraphs 98 and 99 of the Counterclaim.

5. Plaintiff admits the allegations contained in paragraph 100 of the Counterclaim.

6. Plaintiff admits the allegations contained in paragraph 101 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement dated as of December 14, 2007 ("Loan Agreement") Plaintiff denies the remaining allegations of paragraph 101 of the Counterclaim.

7. Plaintiff admits the allegations contained in paragraph 102 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 102 of the Counterclaim.

8. Plaintiff admits the allegations contained in paragraph 103 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 103 of the Counterclaim.

9. Plaintiff admits the allegations contained in paragraph 104 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 104 of the Counterclaim.

10. Plaintiff admits the allegations contained in paragraph 105 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 105 of the Counterclaim.

11. Plaintiff admits the allegations contained in paragraph 106 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 106 of the Counterclaim. Further responding, Plaintiff denies the allegations of paragraph 106 of the Counterclaim because they state a legal conclusion.

12. Plaintiff denies the allegations contained in paragraph 107 of the Counterclaim because they are inconsistent with the terms of the Loan Agreement. Plaintiff further denies the allegations of paragraph 107 of the Counterclaim because they state a legal conclusion.

13. Plaintiff admits the allegations contained in paragraph 108 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 108 of the Counterclaim.

14. Plaintiff admits the allegations contained in paragraph 109 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 109 of the Counterclaim.

15. Plaintiff admits the allegations contained in paragraph 110 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 110 of the Counterclaim.

16. Plaintiff admits the allegations contained in paragraph 111 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 111 of the Counterclaim.

17. Plaintiff admits the allegations contained in paragraph 112 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 112 of the Counterclaim.

18. Plaintiff admits the allegations contained in paragraph 113 of the Counterclaim to the extent they are consistent with the terms of the Loan Agreement. Plaintiff denies the remaining allegations of paragraph 113 of the Counterclaim. Further responding, Plaintiff denies the allegations of paragraph 113 of the Counterclaim because they state a legal conclusion.

19. Plaintiff denies the allegations contained in paragraph 114 of the Counterclaim because they are inconsistent with the terms of the Loan Agreement. Plaintiff further denies the allegations of paragraph 114 of the Counterclaim because they state a legal conclusion.

20. Plaintiff denies the allegations of paragraph 115 of the Counterclaim.

21. Plaintiff denies the allegations of paragraph 116 of the Counterclaim to the extent they are based upon the premise that increases in the monthly payment to the Rollover Reserve Account are based solely on Approved Leasing Expenses. Plaintiff denies the remaining allegations of paragraph 116 of the Counterclaim.

22. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Counterclaim and, therefore, denies those allegations.

23. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Counterclaim and, therefore, denies those allegations.

24. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Counterclaim and, therefore, denies those allegations.

25. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Counterclaim and, therefore, denies those allegations.

26. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Counterclaim and, therefore, denies those allegations.

27. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Counterclaim and, therefore, denies those allegations.

28. Plaintiff admits the allegations contained in paragraph 123 of the Counterclaim.

29. Plaintiff denies the allegations of paragraph 124 of the Counterclaim.

30. Plaintiff denies the allegations of paragraph 125 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Capital Reserve Account was increased significantly in order to meet the projected needs set forth in Fontaines 2-31's Capital Budget.

31. Plaintiff denies the allegations of paragraph 126 of the Counterclaim.

32. Plaintiff denies the allegations of paragraph 127 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Capital Reserve Account was increased significantly in order to meet the projected needs set forth in Fontaines 2-31"s Capital Budget.

33. Plaintiff denies the allegations of paragraph 128 of the Counterclaim.

34. Plaintiff admits the allegations of paragraph 129 of the Counterclaim to the extent they allege that Fontaines 2-31 paid the increased monthly payments into the Capital Reserve Account and the Rollover Reserve Account for approximately four months and then unilaterally stopped making the payments – reverting back to the original payment amounts without the consent of Plaintiff. Plaintiff denies the allegations of paragraph 129 of the Counterclaim to the extent they allege that the increased payments were made as a gesture of good faith. Plaintiff denies the remaining allegations of paragraph 129 of the Counterclaim.

35. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Counterclaim and, therefore, denies those allegations. Further responding, Plaintiff asserts that some of the projected and requested capital improvements were necessary to maintain the Property but have been deferred by Fontaines 2-31 to the detriment of Plaintiff's collateral.

36. Plaintiff admits the allegations of paragraph 131 of the Counterclaim.

37. Plaintiff admits the allegations of paragraph 132 of the Counterclaim to the extent they allege that Plaintiff believed that the reassessment was necessary to cover the projected taxes and insurance for 2012. Plaintiff denies the remaining allegations of paragraph 132 of the Counterclaim.

38. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133 of the Counterclaim and, therefore, denies those allegations. Further responding, Plaintiff admits that the Tax and Insurance Reserve Account payment was reassessed based upon an reasonably anticipated increase in those costs.

39. Plaintiff denies the allegations of paragraph 134 of the Counterclaim.

40. Plaintiff denies the allegations of paragraph 135 of the Counterclaim because the term "one-time increase" is ambiguous and unclear. Plaintiff admits that the Tax and Insurance Account payments were increased in order to meet the projected taxes and insurance for the Property.

41. Responding to the allegations of paragraph 136 of the Counterclaim, Plaintiff craves reference to the correspondence from Mr. Guerena of Marsh Risk & Insurance Services and denies any allegations that are inconsistent therewith.

42. Responding to the allegations of paragraph 137 of the Counterclaim, Plaintiff craves reference to the correspondence from Mr. Guerena of Marsh Risk & Insurance Services and denies any allegations that are inconsistent therewith.

43. Plaintiff denies the allegations of paragraph 138 of the Counterclaim.

44. Plaintiff denies the allegations contained in paragraph 139 of the Counterclaim, except to the extent they allege that DRV explained that the increases in the Capital Reserve Account payments was made at least in part to cover the capital improvements projected in the Capital Budget provided by Fontaines 2-31's agent. Further responding, Plaintiff asserts that the projected and requested capital improvements were necessary to maintain the Property but have been deferred by Fontaines 2-31 to the detriment of Plaintiff's collateral.

45. Plaintiff denies the allegations contained in paragraph 140 of the Counterclaim.

46. Plaintiff denies the allegations contained in paragraph 141 of the Counterclaim.

47. Plaintiff denies the allegations contained in paragraph 142 of the Counterclaim.

48. Plaintiff denies the allegations contained in paragraph 143 of the Counterclaim.

49. Plaintiff denies the allegations contained in paragraph 144 of the Counterclaim.

50. Plaintiff admits the allegations contained in paragraph 145 of the Counterclaim.

51. Plaintiff admits the allegations contained in paragraph 146 of the Counterclaim, except to the extent they allege that the defaults are "improperly alleged," which is denied.

52. Plaintiff denies the allegations contained in paragraph 147 of the Counterclaim.

53. Plaintiff denies the allegations contained in paragraph 148 of the Counterclaim.

54. Plaintiff admits the allegations contained in paragraph 149 of the Counterclaim to the extent they allege that Plaintiff has not reassessed the monthly payments to be made to the Reserve Accounts. Plaintiff denies the remaining allegations contained in paragraph 149 of the Counterclaim. Further responding, Plaintiff alleges that Fontaines 2-31 have failed to pay the reassessed reserve account payments in over a year.

55. Plaintiff denies the allegations contained in paragraph 150 of the Counterclaim.

56. Plaintiff denies the allegations contained in paragraph 151 of the Counterclaim.

57. Plaintiff denies the allegations contained in paragraph 152 of the Counterclaim.

58. Plaintiff denies the allegations contained in paragraph 153 of the Counterclaim.

59. Plaintiff admits the allegations contained in paragraph 154 of the Counterclaim. Further responding, there are no debt service payments being made or reserve account balances due to the acceleration of the Loan.

FOR A THIRD DEFENSE AS TO THE FIRST COUNTERCLAIM

60. In response to the allegations contained in paragraph 155 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

61. Plaintiff denies the allegations contained in paragraph 156 of the Counterclaim.

FOR A FOURTH DEFENSE AS TO THE SECOND COUNTERCLAIM

62. In response to the allegations contained in paragraph 157 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

63. Plaintiff admits the allegations contained in paragraph 158 of the Counterclaim to the extent they allege that the Loan Documents created a valid and binding contract between DRV and Fontaines 2-31. Plaintiff denies the remaining allegations contained in paragraph 158 of the Counterclaim.

64. Plaintiff denies the allegations contained in paragraph 159 of the Counterclaim.

FOR A FIFTH DEFENSE AS TO THE THIRD COUNTERCLAIM

65. In response to the allegations contained in paragraph 160 of the Counterclaim, Plaintiff reaffirms and reiterates the response set forth in paragraphs 1 through 59 above as if set forth herein verbatim.

66. Plaintiff denies the allegations contained in paragraph 161 of the Counterclaim.

67. Plaintiff denies the allegations contained in paragraph 162 of the Counterclaim.

FOR A SIXTH DEFENSE AS TO THE FOURTH COUNTERCLAIM

68. In response to the allegations contained in paragraph 163 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

69. Plaintiff admits the allegations contained in paragraph 164 of the Counterclaim only to the extent it is consistent with the allegations in Plaintiff's Complaint.

70. The allegations contained in paragraph 165 of the Counterclaim do not require a response; however, to the extent a response is required, those allegations are denied. Further responding, Plaintiff denies that Fontaines 2-31 are entitled to a declaratory judgment.

71. Plaintiff denies the allegations contained in paragraph 166 of the Counterclaim.

72. Plaintiff denies the allegations contained in paragraph 167 of the Counterclaim because they state a legal conclusion. Plaintiff craves reference to the statute recited for the accuracy of the allegations in the Counterclaim.

73. Plaintiff admits the allegations contained in paragraph 168 of the Counterclaim.

74. The allegations contained in paragraph 169 of the Counterclaim state a legal conclusion and are, therefore, denied.

75. The allegations contained in paragraph 170 of the Counterclaim do not require a response; however, to the extent they do require a response, they are denied.

FOR A SEVENTH DEFENSE AS TO THE FIFTH COUNTERCLAIM

76. In response to the allegations contained in paragraph 171 of the Counterclaim, Plaintiff reaffirms and reiterates the responses set forth in paragraphs 1 through 59 above as if set forth verbatim.

77. The allegations contained in paragraph 172 of the Counterclaim state a legal conclusion and are, therefore, denied.

78. The allegations contained in paragraph 173 of the Counterclaim state a legal conclusion and are, therefore, denied.

79. Plaintiff denies the allegations contained in paragraph 174 of the Counterclaim.

80. Plaintiff denies the allegations contained in paragraph 175 of the Counterclaim.

81. Plaintiff denies the allegations contained in paragraph 176 of the Counterclaim.

82. Plaintiff denies the allegations contained in paragraph 177 of the Counterclaim.

83. Plaintiff denies the allegations contained in paragraph 178 of the Counterclaim.

84. Plaintiff denies the allegations contained in paragraph 179 of the Counterclaim.

FOR AN EIGHTH DEFENSE

85. Some or all of Defendants' Counterclaims fail to state facts sufficient to constitute a cause of action.

86. Therefore, each such Counterclaim should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A NINTH DEFENSE

87. Some or all of Defendants' Counterclaims are barred based upon the defense of waiver.

88. To the extent any of Fontaines 2-31's Counterclaims are based upon the alleged "arbitrary and capricious" increase of the reserve accounts, which is expressly denied by Plaintiff, Fontaines 2-31 have waived such defenses by voluntarily paying the full increased reserve account payments for some period of months without complaining or objecting to the increases.

89. Therefore, any such Counterclaims should be dismissed.

FOR A TENTH DEFENSE

90. Some or all of Defendants' Affirmative Defenses or Counterclaims are barred based upon the SC Code Ann. § 37-10-107.

91. To the extent any of Fontaines 2-31's Affirmative Defenses or Counterclaims are based upon any allegations or renewal, modification, or amendment to the Loan Documents that are not in writing signed by Plaintiff, those Affirmative Defenses and Counterclaims are barred.

92. Therefore, any such Affirmative Defenses and Counterclaims should be dismissed.

FOR AN ELEVENTH DEFENSE

93. Defendants' have expressly and voluntarily waived the right to a jury trial in the Loan Documents and Defendants' demand for a jury trial in its Counterclaim should, therefore, be stricken.

WHEREFORE, having fully set forth its responses to the Counterclaim of the Defendants, Plaintiff prays that this Honorable Court award the following relief:

A. Awarding all of the relief sought in Plaintiff's Complaint;

B. Dismissing with prejudice all claims set forth in the Answer and Counterclaims of Defendants Fontaine Business Park 2-31; and

C. Such other and further relief as the Court deems just and proper.

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: _____
Paul D. Harrill (SC Bar No. 15268)
Attorneys for the Plaintiff

February 11, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC, *Plaintiff/Counter-Defendant,*	)	
v.	)	MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADING
FONTAINE BUSINESS PARK, LLC, *et al.* *Defendants/Counter-Plaintiff.*	)	

RICHLAND COUNTY FILED
2013 JAN 14 AM 10: 3
JEANETTE W. McBRIDE C.C.P. & G.S.

Defendant, Fontaine Business Park, LLC, ("Fontaine") moves the Court for permission to serve a supplemental pleading in response to the Complaint filed by Plaintiff DRV Fontaine, LLC ("DRV").

Rule 15 of the South Carolina Rules of Civil Procedure permits a party to file a supplemental pleading upon leave of Court. S.C.R.C.P 15(d). The Rule states, in pertinent part:

> Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

Id.

Here, the proposed pleading is a Supplemental Pleading (a copy of which is attached as Exhibit "A" and incorporated herein) that sets forth events that have transpired since Fontaine filed its Answer, Affirmative Defenses and Counterclaims. These subsequent events have given rise to a Ninth Counterclaim against DRV, and made it necessary for Fontaine to supplement its Fifth and

Sixth Counterclaims. They have also given rise to the potential for additional damages to be awarded to Fontaine.

WHEREFORE, Fontaine respectfully moves the Court for an order permitting the filing of the contemplated Supplemental Counterclaim.

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.

Brent B. Young (S.C.Bar No. 74173)
Attorney at Law
100 Med Tech Parkway, Suite 200
Johnson City, TN 37604
(423) 928-0181
byoung@bakerdonelson.com

Attorneys for Fontaine Business Park, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 2012-CP-40-7752

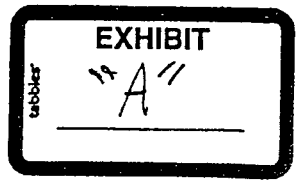
DRV FONTAINE, LLC, *Plaintiff/Counter-Defendant,*	)	SUPPLEMENTAL PLEADING
v.	)	Jury Trial Demanded as to Counterclaims Pursuant to Rule 53, SCRCP
FONTAINE BUSINESS PARK, LLC, *et al.* *Defendants/Counter-Plaintiff.*	)	

Defendant/Counter-Plaintiff Fontaine Business Park, LLC, ("Fontaine") submits this Supplemental Pleading in response to the Complaint filed by Plaintiff DRV Fontaine, LLC ("DRV").

SUPPLEMENTAL FACTS

1. Fontaine specifically incorporates by reference the entire contents, as applicable, of its Answer, Affirmative Defenses and Counterclaims previously filed in this matter on or about December 3, 2012.

2. On December 6, 2012--just three days after the filing of said Answer, Affirmative Defenses and Counterclaims--and after having received notice of said filing, DRV notified Fontaine that it had depleted the funds in the applicable Reserve Accounts and applied the funds against the accelerated indebtedness "as provided in the Loan Agreement." In the interim, requests by Fontaine that certain expenses be paid out of the Reserve Accounts in the regular course (i.e., certain repairs and tenant improvements) have been ignored by DRV.



3. Between October 10, 2012, and January 8, 2013, agents of DRV, repeatedly contacted agents of CBRE Columbia, Fontaine's on-site property manager, in an improper attempt to exercise control over funds held by CBRE for the benefit of Fontaine and the Real Property in order to divert said funds to its use. Upon information and belief, these attempts are ongoing and have continued notwithstanding the facts that a hearing has now been set on DRV's Motion to Appoint a Receiver, and its notice of the allegations included in Fontaine's Counterclaims.

NINTH COUNTERCLAIM: CONVERSION

4. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

5. As set forth in its Answer, Affirmative Defenses and Counterclaims, at the time of the filing of the Complaint herein, no Event of Default had occurred under any Loan Document or applicable law. Accordingly, any purported acceleration of indebtedness by DRV was void and improper.

6. Through its application of the applicable Reserve Account funds to the improperly accelerated indebtedness, DRV has converted these custodial funds to its use.

7. By taking steps to control the rents and other funds of Fontaine held by CBRE, DRV has also converted Fontaine's property to its use.

8. DRV's conduct in these regards has damaged Fontaine in an amount to be proven at trial.

SUPPLEMENT TO FIFTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

9. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

10. The Reserve Accounts held by DRV, which have been improperly depleted by DRV, and the rents and other funds held by CBRE are used to maintain the applicable Real Property and pay associated expenses.

11. To the extent the actions of DRV in improperly emptying these custodial accounts, attempting to obtain control of the rents and other funds of Fontaine held by CBRE, and improperly converting these funds for its use results in the inability of Fontaine to maintain the applicable Real Property or any related contractual relationship, DRV should be held responsible for applicable damages in an amount to be proven at trial.

SUPPLEMENT TO SIXTH COUNTERCLAIM: TORTIOUS INTERFERENCE WITH BUSINESS OR PROSPECTIVE CONTRACTUAL RELATIONS

12. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

13. The Reserve Accounts which have been improperly depleted by DRV and the rents and other funds held by CBRE are used to maintain the applicable Real Property and pay associated expenses. They are also used to pay certain expenses related to prospective new tenants.

14. To the extent the actions of DRV in improperly emptying these custodial accounts, attempting to obtain control of the rents and other funds of Fontaine held by CBRE, and improperly converting these funds for its use results in the inability of Fontaine to maintain the applicable Real Property or any related business or prospective contractual relationship, DRV should be held responsible for applicable damages in an amount to be proven at trial.

WHEREFORE, in consideration of this Supplemental Counterclaim, and in addition to that relief prayed for in its Answer, Affirmative Defenses and Counterclaims, Fontaine prays that a jury be empaneled to try the appropriate issues herein, and that this Honorable Court enter judgment against DRV as follows:

A. Dismissing DRV's Complaint, with prejudice;

B Awarding Fontaine a judgment against DRV for all amounts converted from the custodial Reserve Accounts to DRV's use;

C. Awarding Fontaine a judgment against DRV for punitive damages;

D. Assessing all costs associated with this matter against DRV, and, given the egregious nature of the actions of DRV, awarding Fontaine recovery of its reasonable attorneys' fees and expenses, as well as any other applicable statutory or common law damages available to Fontaine under the circumstances.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

Brent B. Young (S.C.Bar No. 74173)
Attorney at Law
100 Med Tech Parkway, Suite 200
Johnson City, TN 37604
(423) 928-0181
byoung@bakerdonelson.com

Attorneys for Fontaine Business Park, LLC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7752

DRV FONTAINE, LLC,

Plaintiff,

v.

FONTAINE BUSINESS PARK, LLC;
FONTAINE BUSINESS PARK 2, LLC;
FONTAINE BUSINESS PARK 3, LLC;
FONTAINE BUSINESS PARK 4, LLC;
FONTAINE BUSINESS PARK 5, LLC;
FONTAINE BUSINESS PARK 6, LLC;
FONTAINE BUSINESS PARK 7, LLC;
FONTAINE BUSINESS PARK 8, LLC;
FONTAINE BUSINESS PARK 9, LLC;
FONTAINE BUSINESS PARK 10, LLC;
FONTAINE BUSINESS PARK 11, LLC;
FONTAINE BUSINESS PARK 12, LLC;
FONTAINE BUSINESS PARK 13, LLC;
FONTAINE BUSINESS PARK 14, LLC;
FONTAINE BUSINESS PARK 15, LLC;
FONTAINE BUSINESS PARK 16, LLC;
FONTAINE BUSINESS PARK 17, LLC;
FONTAINE BUSINESS PARK 18, LLC;
FONTAINE BUSINESS PARK 19, LLC;
FONTAINE BUSINESS PARK 20, LLC;
FONTAINE BUSINESS PARK 21, LLC;
FONTAINE BUSINESS PARK 22, LLC;
FONTAINE BUSINESS PARK 23, LLC;
FONTAINE BUSINESS PARK 24, LLC;
FONTAINE BUSINESS PARK 25, LLC;
FONTAINE BUSINESS PARK 26, LLC;
FONTAINE BUSINESS PARK 27, LLC;
FONTAINE BUSINESS PARK 28, LLC;
FONTAINE BUSINESS PARK 29, LLC;
FONTAINE BUSINESS PARK 30, LLC;
FONTAINE BUSINESS PARK 31, LLC;

Defendants.

PLAINTIFF'S REPLY TO DEFENDANT FONTAINE BUSINESS PARK, LLC'S SUPPLEMENTAL PLEADING

Plaintiff DRV Fontaine, LLC ("DRV" or "Plaintiff") hereby replies generally to the Supplemental Pleading of the Defendant Fontaine Business Park, LLC ("Fontaine" or "Defendant") that each and every allegation set forth in the Supplemental Pleading that is not expressly and specifically admitted herein is denied, and expressly and specifically replies as follows:

FOR A FIRST DEFENSE

1. Plaintiff denies the allegations and responses contained in paragraphs 1 through 3 of the Supplemental Pleading to the extent they are in any way inconsistent with the allegations set forth in the Complaint.

FOR A SECOND DEFENSE

2. In response to the allegations contained in paragraphs 1 through 3 of the Supplemental Pleading, Plaintiff reaffirms and reasserts the responses set forth in its Reply to Affirmative Defenses and Counterclaims of Defendant Fontaine Business Park, LLC, filed January 10, 2013, as if set forth herein verbatim.

FOR A THIRD DEFENSE

3. In response to the allegations contained in paragraph 2 of the Supplemental Pleading, Plaintiff admits that it provided written notice on December 6, 2012 that due to the continuing default, Plaintiff had applied all available funds, including all funds in the Reserve Accounts, to the accelerated debt as provided in the Loan Agreement. Further responding to allegations of paragraph 2 of the Supplemental Pleading, Plaintiff craves reference to the December 6, 2012 written notice and denies any allegation inconsistent therewith. Plaintiff denies the remaining allegations of paragraph 2 of the Supplemental Pleading.

4. Plaintiff denies the allegations of paragraph 3 of the Supplemental Pleading, except to the extent they allege that Plaintiff has had communications with agents of CB Richard Ellis during the time period alleged.

FOR A FOURTH DEFENSE AS TO THE NINTH COUNTERCLAIM

5. In response to the allegations of paragraph 4 of the Supplemental Pleading, Plaintiff reasserts the responses set forth in the preceding paragraphs as if repeated herein verbatim.

6. Plaintiff denies the allegations contained in paragraphs 5 through 8 of the Supplemental Pleading.

FOR A FIFTH DEFENSE AS TO THE SUPPLEMENT TO THE FIFTH COUNTERCLAIM

7. In response to the allegations of paragraph 9 of the Supplemental Pleading, Plaintiff reasserts the responses set forth in the preceding paragraphs as if repeated herein verbatim.

8. Plaintiff denies the allegations contained in paragraphs 10 and 11 of the Supplemental Pleading.

FOR A SIXTH DEFENSE AS TO THE SUPPLEMENT TO THE SIXTH COUNTERCLAIM

9. In response to the allegations of paragraph 12 of the Supplemental Pleading, Plaintiff reasserts the responses set forth in the preceding paragraphs as if repeated herein verbatim.

10. Plaintiff denies the allegations contained in paragraphs 13 and 14 of the Supplemental Pleading.

FOR A SEVENTH DEFENSE

11. The allegations and claims of the Supplemental Pleading fail to state facts sufficient to constitute causes of action for "Conversion," "Tortious Interference with Contractual Relations," and "Tortious Interference with Business or Prospective Contractual Relations" and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A EIGHTH DEFENSE

12. The allegations and claims of the Supplemental Pleading for "Conversion," "Tortious Interference with Contractual Relations," and "Tortious Interference with Business or Prospective Contractual Relations" fail because the defendants consented to and authorized the alleged actions that form the basis of those claims.

WHEREFORE, having fully set forth its responses to the Supplemental Pleading of the Defendant, Plaintiff prays that this Honorable Court award the following relief:

A. Awarding all of the relief sought in Plaintiff's Complaint;

B. Dismissing with prejudice all claims set forth in the Answer, Affirmative Defenses and Counterclaims;

C. Dismissing with prejudice all claims set forth in the Supplemental Pleading; and

D. Such other and further relief as the Court deems just and proper.

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: _____
Paul D. Harrill (SC Bar No. 15268)
Attorneys for the Plaintiff

April 3, 2013

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. THOMAS COOPER., Circuit Court Judge

Case No. 2012-CP-40-7752

RECEIVED
FEB 22 2013
SC Court of Appeals

DRV Fontaine, LLC,

Respondent,

v.

Fontaine Business Park, LLC,
Fontaine Business Park 2, LLC
Fontaine Business Park 3, LLC
Fontaine Business Park 4, LLC
Fontaine Business Park 5, LLC
Fontaine Business Park 6, LLC
Fontaine Business Park 7, LLC
Fontaine Business Park 8, LLC
Fontaine Business Park 9, LLC
Fontaine Business Park 10, LLC
Fontaine Business Park 11, LLC
Fontaine Business Park 12, LLC
Fontaine Business Park 13, LLC
Fontaine Business Park 14, LLC
Fontaine Business Park 15, LLC
Fontaine Business Park 16, LLC
Fontaine Business Park 17, LLC
Fontaine Business Park 18, LLC
Fontaine Business Park 19, LLC
Fontaine Business Park 20, LLC
Fontaine Business Park 21, LLC
Fontaine Business Park 22, LLC
Fontaine Business Park 23, LLC
Fontaine Business Park 24, LLC
Fontaine Business Park 25, LLC
Fontaine Business Park 26, LLC
Fontaine Business Park 27, LLC
Fontaine Business Park 28, LLC

Appellants.

Fontaine Business Park 29, LLC
Fontaine Business Park 30, LLC
Fontaine Business Park 31, LLC

NOTICE OF APPEAL

Appellants listed above appeal the order of the Honorable G. Thomas Cooper dated January 27, 2014 granting Respondent's Motion to Strike Defendants' Jury Trial Demand. Appellants received written notice of entry of the Order on February 3, 2014.

This 27th day of February, 2014.

Tucker S. Player
PLAYER LAW FIRM, LLC
1415 Broad River Road
Columbia, South Carolina 29210
Ph:803-772-8008(ext. 101)
Fx: 803-772-8037
Tucker@playerlawfirm.com
Attorney for Fontaine Business Park 2 through 31, LLC

Brent B. Young
Mark A. Fulks (admitted *pro hac vice*)
BAKER DONELSON BEARMAN, CALDWELL & BERKOWITZ, PC
100 Med Tech Parkway, Suite 200
PO Box 3038
Johnson City, Tennessee 37602
Ph: 423.928.0181
Fx: 423.979.7654
byoung@bakerdonelson.com
mfulks@bakerdonelson.com
Attorneys for Fontaine Business Park, LLC

Other Counsel of Record:
PAUL HARRILL
MCNAIR LAW FIRM
1221 MAIN STREET, SUITE 1800
COLUMBIA, SC 29201
POST OFFICE BOX 11390
COLUMBIA, SC 29211

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO.: 2012-CP-40-7752
DRV FONTAINE, LLC, Plaintiff, v. FONTAINE BUSINESS PARK, LLC, et al.; Defendants.	**PLAINTIFF'S MOTION TO STRIKE JURY TRIAL DEMAND of DEFENDANTS**

TO: TUCKER S. PLAYER, ESQ., ATTORNEY FOR DEFENDANTS FONTAINE BUSINESS PARK 2 – 31, LLC and BRENT B. YOUNG, ESQ. and MARK A. FULKS, ESQ., ATTORNEYS FOR DEFENDANT FONTAINE BUSINESS PARK, LLC:

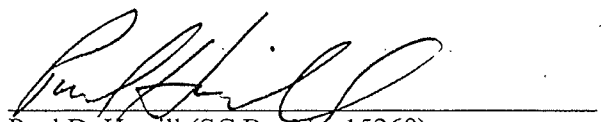
You will please take notice that the plaintiff, DRV Fontaine, LLC, hereby moves, pursuant to Rules 12 (f), 38 and 71 of the South Carolina Rules of Civil Procedure, to strike the defendants' demand for a jury trial and to maintain and/or return the case to the non-jury docket.

This motion is based upon the pleadings filed in this case, the exhibits attached to the Complaint, including the express waivers found in the Loan Agreement (attached hereto as Exhibit A), the Mortgage, Assignment of Leases and Rents and Security Agreement (attached hereto as Exhibit B), the Loan Assumption Agreement (attached hereto as Exhibit C), the First Amendment to Loan Assumption Agreement (attached hereto as Exhibit D), and any memorandum submitted prior to the hearing of this matter. This motion is further based upon the South Carolina Rules of Civil Procedure and applicable statutory and common law.

Prior to filing this motion, I have attempted to confer with opposing counsel in an effort to resolve the matter contained in the motion to strike Defendant's demand for a jury trial; however, the parties have not been able to resolve this issue.

Respectfully submitted,

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: 
Paul D. Harrill (SC Bar No. 15268)

Attorneys for the Plaintiff

August 7, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

DRV Fontaine, LLC)
☒Plaintiff,)

v.)

Fontaine Business Park, LLC, et al.,)
☐Defendants.)

check box above indicating submitting party

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

CASE NO. 2012-CP-40-7752

Motion Information Form and Cover Sheet

name, S.C. Bar no. and address of Plaintiff's attorney	name,S.C. Bar no. and address of Defendant's attorneys
Paul D. Harrill (SC Bar No. 15268) McNair Law Firm, P.A. P.O. Box 11390, Columbia, SC 29211 telephone: 803-799-9800 fax: 803-753-3278 e-mail: pharrill@mcnair.net other:	Brent B. Young, Baker, Donelson, Bearman & Berkowitz 100 Med Tech Parkway, Suite 200 Johnson City, TN 37604 Tucker S. Player, Player Law firm, LLC 1415 Broad River Road Columbia, SC 29210

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: To Strike Jury Trial Demand
Estimated Time Needed: 30 Minutes Court Reporter Needed: YES / NO (circle one)

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion –
I hereby move for relief or action by the court as set forth in the attached proposed order.

August 7, 2013
Paul D. Harrill (Attorney for Plaintiff)

SECTION III: Motion Fee

☒ PAID – AMOUNT $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION DATE FILED

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/20003)

A

LOAN AGREEMENT
(Senior Loan)

Dated as of December 14, 2007

by and among

FONTAINE BUSINESS PARK, LLC
a Delaware limited liability company,

as Borrower,

and

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.,
a Delaware corporation,

as Lender.

FONTAINE BUSINESS PARK

Richland County, South Carolina

TABLE OF CONTENTS

Schedule 1 - Required Repairs
Schedule 2 - Exceptions to Representations and Warranties
Schedule 3 - Organization of Borrower
Schedule 4 - Definition of Special Purpose Bankruptcy Remote Entity
Schedule 5 - Form of Guaranty of Recourse Obligations
Schedule 6 - Form of Assignment and Assumption Agreement
Schedule 7 - Rent Roll

TABLE OF CONTENTS

Page

1. DEFINITIONS; PRINCIPLES OF CONSTRUCTION 1
   1.1 Specific Definitions 1
   1.2 Index of Other Definitions 15
   1.3 Principles of Construction 17

2. GENERAL LOAN TERMS 17
   2.1 The Loan 17
   2.2 Interest; Monthly Payments 17
   2.3 Loan Repayment 19
   2.4 Release of Property 21
   2.5 Payments and Computations 22

3. RESERVES 22
   3.1 [Intentionally deleted] 22
   3.2 Required Repairs 23
   3.3 Taxes and Insurance 23
   3.4 Capital Expense Reserves 24
   3.5 Rollover Reserves 24
   3.6 Leasing Reserve 26
   3.7 Security Deposits 26
   3.9 [Intentionally deleted] 26
   3.10 [Intentionally deleted] 26
   3.11 Grant of Security Interest; Application of Funds 26

4. REPRESENTATIONS AND WARRANTIES 27
   4.1 Organization; Special Purpose 27
   4.2 Proceedings; Enforceability 27
   4.3 No Conflicts 27
   4.4 Litigation 28
   4.5 Agreements 28
   4.6 Title 28
   4.7 No Bankruptcy Filing 28
   4.8 Full and Accurate Disclosure 28
   4.9 Tax Filings 29
   4.10 No Plan Assets 29
   4.11 Compliance 29
   4.12 Contracts 29
   4.13 Federal Reserve Regulations; Investment Company Act 30
   4.14 Easements; Utilities and Public Access 30
   4.15 Physical Condition 30
   4.16 Leases 30
   4.17 Fraudulent Transfer 31
   4.20 Management Agreement 32

Page

4.21 Hazardous Substances 32
4.22 Name 33
4.23 Other Debt 33
4.24 Tenant in Common Agreement 33
4.25 Securities Laws Compliance 34

5. COVENANTS 34
5.1 Existence 35
5.2 Taxes and Other Charges 35
5.3 Access to Property 35
5.4 Repairs; Maintenance and Compliance; Alterations 35
5.5 Performance of Other Agreements 36
5.6 Cooperate in Legal Proceedings 36
5.7 Further Assurances 36
5.8 Environmental Matters 37
5.9 Title to the Property 39
5.10 Leases 39
5.11 [Intentionally deleted] 41
5.13 Special Purpose Bankruptcy Remote Entity 42
5.14 [Intentionally deleted] 42
5.15 Change In Business or Operation of Property 42
5.16 Debt Cancellation 43
5.17 Affiliate Transactions 43
5.18 Zoning 43
5.19 No Joint Assessment 43
5.20 Principal Place of Business 43
5.21 Change of Name, Identity or Structure 43
5.22 Indebtedness 43
5.23 Licenses 43
5.24 Compliance with Restrictive Covenants, Etc 44
5.25 ERISA 44
5.26 Transfers 44
5.27 Liens 49
5.28 Dissolution 49
5.29 Expenses 49
5.30 Indemnity 50
5.31 Tenant in Common Agreement and Other Property Agreements 51

6. NOTICES AND REPORTING 54
6.1 Notices 54
6.2 Borrower Notices and Deliveries 55
6.3 Financial Reporting 55

7. INSURANCE; CASUALTY; AND CONDEMNATION 57
7.1 Insurance 57
7.2 Casualty 60

Page

7.3 Condemnation 61
7.4 Application of Proceeds or Award 61

8. DEFAULTS 62
8.1 Events of Default 62
8.2 Remedies 64

9. SPECIAL PROVISIONS 66
9.1 Sale of Note and Secondary Market Transaction 66

10. MISCELLANEOUS 69
10.1 Exculpation 69
10.2 Brokers and Financial Advisors 72
10.3 Retention of Servicer 72
10.4 Survival 73
10.5 Lender's Discretion 73
10.6 Governing Law 73
10.7 Modification, Waiver in Writing 74
10.8 Trial by Jury 74
10.9 Headings/Exhibits 75
10.10 Severability 75
10.11 Preferences 75
10.12 Waiver of Notice 75
10.13 Intentionally Omitted 75
10.14 Prior Agreements 75
10.15 Offsets, Counterclaims and Defenses 75
10.16 Publicity 76
10.17 No Usury 76
10.18 Conflict; Construction of Documents 76
10.19 No Third Party Beneficiaries 76
10.20 Yield Maintenance Premium 77
10.21 Assignment 77
10.22 Original Borrower as Borrowers' Designee 77
10.23 [Intentionally deleted.] 77
10.24 Joint and Several 78
10.25 Set-Off 78
10.26 1031 Exchange 78
10.27 Certain Additional Rights of Lender 78
10.28 Counterparts 79
10.29 Reasonable Attorney's Fees 79

LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of December 14, 2007 (as the same may be modified, supplemented, amended or otherwise changed, this "*Agreement*"), is made by and among FONTAINE BUSINESS PARK, LLC, a Delaware limited liability company, together with its permitted successors and assigns ("*Borrower*"), and GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation (together with its successors and assigns, "*Lender*").

1. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 Specific Definitions. The following terms have the meanings set forth below:

Account: an account into which Lender shall deposit sums which Borrower is required to deposit with Lender under Section 3 hereof, which shall at all times be an Eligible Account and may be ledger or book entry accounts and not actual accounts.

Affiliate: as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

Approved Capital Expenses: Capital Expenses incurred by Borrowers and approved by Lender.

Approved Control Party: U.S. Advisors; provided, however, at the time in question (i) such Approved Control Party shall (1) be solvent, (2) have never been convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no material outstanding judgments against it, and (ii) Lender shall have received a credit check and background investigation against such Approved Control Party reasonably acceptable to Lender.

Approved Leasing Expenses: actual out-of-pocket expenses incurred by Borrower and payable to third parties that are not Affiliates of Borrower or Guarantors in leasing space at the Property pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (i) are (A) specifically approved by Lender in connection with approving the applicable Lease, (B) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not require Lender's approval under the Loan Documents, or (C) otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed, and (ii) are substantiated by executed Lease documents and brokerage agreements.

Approved Mezzanine Lender: the lender under an Approved Mezzanine Loan that has been approved by Lender and the applicable Rating Agencies.

Approved Mezzanine Loan: a loan from an Approved Mezzanine Lender to Mezzanine Borrower provided that: (A) Borrower shall provide not less than thirty (30) days'

advance written notice to Lender regarding any proposed mezzanine debt and furnish to Lender such information as Lender may require regarding the mezzanine debt, and Lender shall have approved the mezzanine debt; (B) thirty-six (36) complete calendar months shall have elapsed after the date hereof without the occurrence of (i) any Event of Default, cured or uncured, arising from Borrower's breach of any monetary obligation under the Loan Documents, or (ii) any Event of Default arising from Borrower's breach of any non-monetary obligation under the Loan Documents which has not been cured at or before the time the Approved Mezzanine Loan is incurred; (C) a current MAI appraisal of the Property prepared by an MAI appraiser selected by Lender and in form and substance reasonably acceptable to Lender shall have confirmed that the Property has sufficient value such that the aggregate of the principal of the Loan and the Approved Mezzanine Loan shall not exceed 70% of the "as-is" appraised value of the Property at the time the Approved Mezzanine Loan is incurred; (D) the annual underwritten net cash flow from the Property available for combined debt service under the Loan Documents and the Approved Mezzanine Loan shall produce a combined Debt Service Coverage Ratio of at least 1.20 to 1.00 as determined by Lender in accordance with its customary underwriting standards reasonably applied; (E) such loan shall be secured by the Mezzanine Loan Liens; (F) the loan documents evidencing and securing such loan shall have been approved by Lender; (G) the term of such Approved Mezzanine Loan shall expire on or before the Stated Maturity Date; (H) Lender shall have received an intercreditor and subordination agreement from the holder of the Approved Mezzanine Loan substantially in the form of Appendix VI to the U.S. CMBS Legal and Structured Finance Criteria published by Standard & Poors (May 1, 2003) with such commercially reasonable negotiated changes acceptable to Lender and any applicable Rating Agency, and otherwise in form and substance reasonably satisfactory to Lender; (I) Borrower shall have paid all reasonable costs and expenses incurred by Lender in connection with the Approved Mezzanine Loan, including reasonable attorneys' fees and costs; (J) the lender of the Approved Mezzanine Loan shall be a Qualified Lender; (K) Lender shall have received such opinions of counsel as are customary and standard in such transactions, including, if the Approved Mezzanine Loan is made after a Secondary Market Transaction, an opinion that the mezzanine debt will not be a "significant modification" of the Loan within the meaning of Section 1001 of the Internal Revenue Code and Section 1.860G-2(b)(3) of the Regulations of the United States Department of Treasury, and that the mezzanine debt will not result in a tax being imposed on the trust which becomes the holder of the Note and the Deed of Trust following a Secondary Market Transaction (as defined in Section 33 below) or cause any REMIC involved in such Secondary Market Transaction to fail to qualify as a REMIC under the applicable provisions of the Internal Revenue Code and the Regulations of the United States Department of Treasury promulgated in connection therewith; (L) if the Approved Mezzanine Loan is made after a Secondary Market Transaction, Lender shall have received a Rating Comfort Letter from each applicable Rating Agency; and (M) if required by Lender, Borrower shall have implemented cash management controls in form and substance acceptable to Lender and at Borrower's sole cost and expense which shall remain in place for a term not equal to less than the term of the Approved Mezzanine Loan.

Approved TIC Borrower Control Party: a transferee of a direct or indirect interest in any TIC Borrower (which owns less than a 5% tenant in common interest in the Property) that has acquired such interest by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest; provided, however, at the time in question (i) such Approved TIC Borrower Control Party shall (1) be solvent, (2) have never been

convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no outstanding judgments against him/her which could have a material adverse effect on the applicable TIC Borrower to pay or perform any obligation under any Loan Document or to provide any security as required by the Loan Documents, and (ii) Lender shall have received a credit check investigation against such Approved TIC Borrower Control Party reasonably acceptable to Lender.

Borrowers: collectively, Original Borrower and each TIC Borrower that may hereafter assume the Loan as contemplated by Section 5.26.2, together with their respective permitted successors and assigns.

Borrower: any one of the Borrowers individually, and all of the Borrowers collectively.

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Capital Expenses: expenses that are capital in nature or required under GAAP to be capitalized.

Certificates: any securities (including all classes thereof) representing beneficial ownership interests in the Loan or in a pool of mortgage loans including the Loan issued in connection with a Secondary Market Transaction.

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

Control: with respect to any Person, either (i) ownership directly or indirectly of 51% or more of all equity interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

Debt: the unpaid Principal, all interest accrued and unpaid thereon, any Yield Maintenance Premium and all other sums due to Lender in respect of the Loan or under any Loan Document.

Debt Service: with respect to any particular period, the greater of (i) scheduled Principal and interest payments due under the Note in such period or (ii) the product of (A) the outstanding Principal as of the end of such period multiplied by (B) 10.09%, but assuming only for the purpose of calculating the Debt Service Coverage Ratio that the Monthly Debt Service Payment Amount is payable.

Debt Service Coverage Ratio: as of any date, the ratio calculated by Lender of (i) the Net Operating Income for the 12-month period ending with the most recently completed calendar month to (ii) the Debt Service with respect to such period.

Default: the occurrence of any event under any Loan Document which, with the giving of notice or passage of time, or both, would be an Event of Default.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) 5% above the Interest Rate, compounded monthly.

Defeasance Collateral: U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, all Payment Dates and other scheduled payment dates, if any, under the Note after the Defeasance Date and up to and including the Stated Maturity Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments.

Eligible Account: a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts (A) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (B) as to which Lender has received a Rating Comfort Letter from each of the applicable Rating Agencies with respect to holding funds in such account, or (ii) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations §9.10(b), having in either case corporate trust powers, acting in its fiduciary capacity, and a combined capital and surplus of at least $50,000,000 and subject to supervision or examination by federal and state authorities. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

Eligible Institution: a depository institution insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody's and F-1+ by Fitch, in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's.

Eligibility Requirements: with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of $600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

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

ERISA Affiliate: all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common Control and all other entities which, together with Borrowers (or any Borrower), are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

Fund Manager: U.S. Commercial LLC, a Virginia limited liability company.

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

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

Guarantors: Fund Manager, Kevin Fitzgerald and each TIC Owner that may hereafter execute and deliver a guaranty of recourse obligations as contemplated by Section 5.26.2.

Interest Period: (i) the period from the date hereof through the first day thereafter that is the 5th day of a calendar month and (ii) each period thereafter from the 6th day of each calendar month through the 5th day of the next calendar month; except that the Interest Period, if any, that would otherwise commence before and end after the Maturity Date shall end on the Maturity Date. Notwithstanding the foregoing, if Lender exercises its right to change the Payment Date to a New Payment Date in accordance with Section 2.2.4, then from and after such election, each Interest Period shall be the period from the New Payment Date in each calendar month through the day in the next succeeding calendar month immediately preceding the New Payment Date in such calendar month.

Interest Rate: a rate of interest equal to 6.64 % (or, when applicable pursuant to this Agreement or any Loan Document, the Default Rate).

Key Principals: U.S. Advisors, Kevin Fitzgerald and H. Michael Schwartz.

Leases: 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 Property or the Improvements, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder.

Lease Termination Payments: (i) all fees, penalties, commissions or other payments made to Borrowers in connection with or relating to the rejection, buy-out, termination, surrender or cancellation of any Lease (including in connection with any bankruptcy proceeding), and any security deposits or proceeds of letters of credit held by Borrowers in lieu of cash security deposits, which Borrowers are permitted to retain pursuant to the applicable provisions of any Lease and (ii) any payments made to Borrowers relating to unamortized tenant improvements and leasing commissions under any Lease.

Legal Requirements: statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Borrower, any Loan Document or all or part of the Property or the construction, ownership, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to any Borrower, at any time in force affecting all or part of the Property.

Lender's Consultant: a licensed hydrogeologist, licensed environmental engineer or other qualified environmental consulting firm engaged by Lender

Lien: any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any part of the Property or any interest therein, or any direct or indirect interest in any Borrower, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

Loan Documents: this Agreement and all other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Lender in connection with the Loan, including the following, each of which is dated as of the date hereof:

(i) the Promissory Note made by Original Borrower to Lender in the aggregate principal amount equal to the Loan (the "*Note*"),

(ii) the Mortgage, Assignment of Leases and Rents and Security Agreement made by Original Borrower in favor of Lender which covers the Property (the "*Mortgage*"),

(iii) the Assignment of Leases and Rents from Original Borrower to Lender,

(iv) the Assignment of Agreements, Licenses, Permits and Contracts from Original Borrower to Lender,

(v) the Guaranty of Recourse Obligations made by U.S. Commercial LLC and Kevin Fitzgerald; and

(vi) the Consent and Subordination of Manager between Original Borrower and Manager; as each of the foregoing may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, supplemented or otherwise modified from time to time (including pursuant to Section 9.1.8).

Additionally, from and after any Permitted TIC Transfer, each TIC Transfer Document required by Section 5.26.2(b) shall constitute a Loan Document.

Management Agreement: the management agreement between Original Borrower and Manager, pursuant to which Manager is to manage the Property, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with Section 5.12.

Manager: Fontaine Management, LLC, or any successor, assignee or replacement manager appointed by Borrowers in accordance with Section 5.12.

Material Alteration: any alteration affecting structural elements of the Property the cost of which exceeds $250,000; provided, however, that in no event shall (i) any Required

Repairs, (ii) any tenant improvement work performed pursuant to any Lease existing on the date hereof or entered into hereafter in accordance with the provisions of this Agreement, or (iii) alterations performed as part of a Restoration, constitute a Material Alteration.

Material Lease: all Leases which individually or in the aggregate with respect to the same tenant and its Affiliates (i) cover more than 10,000 square feet of the Improvements or (ii) have a gross annual rent of more than 5% of the total annual Rents or (iii) demise at least one full floor of the Improvements.

Maturity Date: the date on which the final payment of principal of the Note becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Mezzanine Borrower: One or more of the members of the Borrowers, but in no event shall Mezzanine Borrower be any Borrower.

Mezzanine Loan Documents: all documents, agreements or instruments evidencing, securing or delivered in connection with any Approved Mezzanine Loan.

Mezzanine Loan Liens: Liens on the membership interests in Original Borrower pursuant to an Approved Mezzanine Loan, but not including any Lien whatsoever on the Property or any other collateral for the Loan.

Minor Lease: any Lease that is not a Material Lease.

Net Operating Income: for any period, the underwritten net cash flow of the Property determined by Lender in its sole and absolute discretion in accordance with Lender's then current underwriting standards for loans of this type and the then current underwriting standards of the Rating Agencies (including adjustments for market vacancy, bankrupt tenants, leasing costs and capital items).

Officer's Certificate: a certificate delivered to Lender by Borrowers, which is signed by a senior executive officer of Original Borrower.

Original Borrower: Fontaine Business Park, LLC, a Delaware limited liability company.

Other Charges: all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

Payment Date: the 6th day of each calendar month or, upon Lender's exercise of its right to change the Payment Date in accordance with Section 2.2.4, the New Payment Date (in either case, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter).

Permitted Encumbrances: (i) the Liens created by the Loan Documents, (ii) all Liens and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes or Other Charges not yet due and payable and not delinquent, (iv) any workers', mechanics' or other similar Liens on the Property provided that any such Lien is bonded or discharged within 60 days after Borrower first receives notice of such Lien, (v) such other title and survey exceptions as Lender approves in writing in Lender's discretion, and (vi) the Mezzanine Loan Liens.

Permitted Fund Manager: any Person that on the date of determination is (i) any nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least $250,000,000 and (iii) not subject to a Proceeding.

Permitted TIC Transfer: a TIC Transfer and a TIC Transfer and Assumption, each pursuant to, and subject to the satisfaction of the conditions set forth in, subsections (a), (b) or (c) of Section 5.26.2, as applicable.

Permitted Transfers:

(i) a Lease entered into in accordance with the Loan Documents;

(ii) a Permitted Encumbrance;

(iii) a Transfer and Assumption pursuant to Section 5.26.3;

(iv) a Permitted TIC Transfer;

(v) provided that no Event of Default shall then exist (or, if an Event of Default exists, the Transfer of the subject tenant-in-common interest will cure such Event of Default), a conveyance or assignment of a tenant-in-common interest in the Property from one existing Borrower to any other existing Borrower or to U.S. Advisors or its Affiliates in accordance with the terms and provisions of the Tenant in Common Agreement and this Agreement (provided that Original Borrower shall continue to retain not less than a one percent tenant in common interest in the Property);

(vi) provided that no Event of Default shall then exist, a Transfer of a direct or indirect interest in any Borrower to any Person, provided that:

(A) such Transfer shall not:

(w) with respect to any Borrower, cause the transferee (other than a Key Principal, an Approved Control Party or an Approved Mezzanine Lender), together with its Affiliates, to acquire Control of any Borrower or to increase its direct or indirect interest in any Borrower to an amount which equals or exceeds 49%, or

(x) with respect to Original Borrower, result in Original Borrower no longer being Controlled by a Key Principal, an Approved Control Party or an Approved Mezzanine Lender, or

(y) cause such Borrower to fail to maintain its status as a Special Purpose Bankruptcy Remote Entity, or

(z) cause a breach of any covenant in Section 5.32.

(B) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 10 days prior to the date of such Transfer, and

(C) the legal and financial structure of each of the Borrowers and their members and the single purpose nature and bankruptcy remoteness of each of the Borrowers and their members after such Transfer shall satisfy Lender's then current applicable underwriting criteria and requirements;

(vii) provided that no Event of Default shall then exist, a Transfer of a direct or indirect interest in a Borrower related to or in connection with the estate planning of such transferor to (1) the spouse, children or grandchildren of such transferor or (2) a trust established for the benefit of such parties, provided that:

(A) such Transfer shall not cause a change in the Control of any Borrower;

(B) such Transfer shall not result in a change of the day-to-day management and operations of the Property;

(C) Borrowers shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 10 days after the date of such Transfer; and

(D) the legal and financial structure of the applicable Borrower, and the single purpose nature and bankruptcy remoteness of such Borrower after such Transfer, shall satisfy Lender's then current applicable underwriting criteria and requirements; or

(viii) a Transfer of a direct or indirect interest in any Borrower that occurs by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest to a member of the immediate family of such interest holder or a trust established for the benefit of such immediate family member, provided that:

(A) no such Transfer shall result in a change of the day-to-day operations of the Property;

(B) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 20 days after the date of such Transfer;

(C) such Borrower shall continue to be a Special Purpose Bankruptcy Remote Entity; and

(D) if any such Transfer would result in a change of Control of such Borrower, at Borrower's sole cost and expense, shall (a) obtain the prior written consent of Lender which shall not be unreasonably withheld, unless such Transfer of Control has occurred with respect to a TIC Borrower that owns less than a 5% tenant in common interest in the Property and is to an Approved TIC Borrower Control Party (in which case Lender's consent shall not be required under this subclause (a)), and (b) reimburse Lender for all reasonable expenses incurred by Lender in connection with such Transfer.

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

Plan: (i) an employee benefit or other plan established or maintained by a Borrower or any ERISA Affiliate or to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

Proceeding: the commencement, whether voluntary or involuntary, of any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors.

Property: the parcel of real property and Improvements thereon owned by Borrowers and encumbered by the Mortgage; together with all rights pertaining to such real property and Improvements, and all other collateral for the Loan as more particularly described in the granting clauses of the Mortgage and referred to therein as the Property. The Property is located in Richland County, South Carolina.

Property Agreements: The Tenant in Common Agreement and the Management Agreement.

Qualified Lender: means one or more of the following (other than Borrower or an affiliate thereof):

(A) any bank, savings and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (A) or (B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by any of the entities described in clauses (A) through (C) above;

(E) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations ("***CDO***") secured by or financing through an "owner trust" of, the Mezzanine Debt (collectively, "***Securitization Vehicles***"), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Lenders under clauses (A), (B), (C) or (D) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Qualified Lenders under clauses (A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, or manager fails to meet the requirements of this clause (E), such Person must be replaced by a Person meeting the requirements of this clause (E) within thirty (30) days; or

(F) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Lender under clauses (A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Lenders under clauses (A), (B), (C) or (D) of this definition; or

(G) any lending entity party to an Approved Mezzanine Loan transaction with respect to which a Rating Comfort Letter has been given.

Qualified Trustee: (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies (as defined in Section 33 below).

Rating Agency: each of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("***S&P***"), Moody's Investors Service, Inc. ("***Moody's***"), and Fitch, Inc., a division of Fitch Ratings Ltd. ("***Fitch***") or any other nationally-recognized statistical rating organization to the extent any of the foregoing have been engaged by Lender or its designee in connection with or in anticipation of any Secondary Market Transaction.

Rating Comfort Letter: a letter issued by each of the applicable Rating Agencies which confirms that the taking of the action referenced to therein will not result in any qualification, withdrawal or downgrading of any existing ratings of Securities created in a Secondary Market Transaction. In the event that no Certificates are outstanding or the loan secured by this Instrument is not part of a Secondary Market Transaction, any action that would otherwise

require a Rating Comfort Letter shall require the consent of the Lender, which consent shall not be unreasonably withheld or delayed.

Release Date: the earlier to occur of (i) the forty-second (42nd) Payment Date of the Term and (ii) the date that is two (2) years from the "startup day" (within the meaning of Section 860G(a)(9) of the Code) of the REMIC Trust established in connection with a Securitization involving this Loan.

REMIC Trust: a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note.

Rents: all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower, Manager or any of their agents or employees from any and all sources arising from or attributable to the Property and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, Manager or any of their agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

Required Special Servicer Rating: (i) a rating of "CSS1" in the case of Fitch, (ii) on the S&P list of approved special servicers in the case of S&P and (iii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination, and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

Scheduled Defeasance Payments: the Monthly Debt Service Payment Amount required under the Note for all Payment Dates occurring after the Defeasance Date (including the outstanding Principal balance on the Note as of the Stated Maturity Date).

Security Agreement: a security agreement in form and substance that would be satisfactory to Lender (in Lender's sole but good faith discretion) pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

Servicer: a servicer selected by Lender to service the Loan, including any "master servicer" or "special servicer" appointed under the terms of any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction.

State: the state in which the Property is located.

Stated Maturity Date: January 6, 2018, as such date may be changed in accordance with Section 2.2.4.

Taxes: all real estate and personal property taxes, assessments, water rates or sewer rents, maintenance charges, impositions, vault charges and license fees, now or hereafter levied or assessed or imposed against all or part of the Property.

Tenant in Common Agreement: a tenant in common agreement to be entered into by Original Borrower and any TIC Borrowers upon the initial TIC Transfer, if such transfer occurs, pursuant to Section 5.26.2, as the same may thereafter be assumed by subsequently admitted TIC Borrowers in accordance with Section 5.26.2.

Term: the entire term of this Agreement, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by Borrowers pursuant to the Loan Documents.

Title Insurance Policy: the ALTA mortgagee title insurance policy in the form acceptable to Lender issued with respect to the Property and insuring the Lien of the Mortgage.

Transfer: any sale, conveyance, transfer, Lease or assignment, or the entry into any agreement to sell, convey, transfer, lease or assign, whether by law or otherwise, of, on, in or affecting (i) all or part of the Property (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in any Borrower (including any profit interest or rights to distributions of cash), or (iii) any change in Control of a Borrower. For purposes hereof, (i) a Transfer of an interest in a Borrower shall be deemed to include (A) if such Borrower or controlling shareholder of such Borrower 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 one or a series of transactions by which an aggregate of more than ten percent (10%) 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 and (B) if such Borrower or controlling shareholder of such Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member and (ii) a change of Control of such Borrower shall be deemed to have occurred if (A) there is any change in the identity of any individual or entity or any group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause such Borrower to take some action or to prevent, restrict or impede such Borrower from taking some action which, in either case, such Borrower could take or could refrain from taking were it not for the rights of such individuals or (B) the individual or entity or group of individuals or entities that Control such Borrower as described in clause (A) ever cease to own at least fifty-one percent (51%) of all equity interests (direct or indirect) in such Borrower.

Treasury Rate: the annualized yield on securities issued by the United States Treasury having a maturity corresponding to the remaining term to the originally scheduled Stated Maturity Date of this Note, as quoted in Federal Reserve Statistical Release H. 15(519) under the heading "U.S. Government Securities - Treasury Constant Maturities" for the Treasury Rate Determination Date, converted to a monthly equivalent yield. If yields for such securities of such maturity are not shown in such publication, then the Treasury Rate shall be determined by Lender by linear interpolation between the yields of securities of the next longer and next shorter maturities. If said Federal Reserve Statistical Release or any other information necessary for determination of the Treasury Rate in accordance with the foregoing is no longer published or is otherwise unavailable, then the Treasury Rate shall be reasonably determined by Lender based on comparable data.

Treasury Rate Determination Date: the date which is five banking days prior to the scheduled prepayment date. Lender shall notify Borrower of the amount and the basis of determination of the required Yield Maintenance Premium.

UCC: the Uniform Commercial Code as in effect in the state of Delaware or the state in which any of the Cash Accounts are located, as the case may be.

U.S. Advisors: U.S. Advisor LLC, 5 Financial Plaza, Suite 205, Napa, California 92694.

U.S. Obligations: obligations that are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, and, to the extent acceptable to the applicable Rating Agencies, other non-callable government securities satisfying the REMIC Provisions (hereinafter defined), in each case to the extent such obligations are not subject to prepayment, call or early redemption. As used herein, "REMIC Provisions" mean provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Sections 860A through 860G of Subchapter M of Chapter 1 of Subtitle A of the Code, and related provisions, and temporary and final regulations and, to the extent not inconsistent with such temporary and final regulations, proposed regulations, and published rulings, notices and announcements promulgated thereunder, as the foregoing may be in effect from time to time.

Welfare Plan: an employee welfare benefit plan, as defined in Section 3(1) of ERISA.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under this Agreement through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amount and/or Monthly Interest Payment Amount, as the case may be, required under this Agreement through the Stated Maturity Date together with the outstanding principal balance of the Note as of the Stated Maturity Date assuming all such Monthly Debt Service Payment Amounts and/or Monthly Interest Payment Amounts, as the case may be, are made (including any servicing costs associated therewith). In no event shall the Yield Maintenance Premium be less than zero.

1.2 **Index of Other Definitions**. The following terms are defined in the sections or Loan Documents indicated below:

"*Annual Budget*" - 6.3.5
"*Applicable Taxes*" - 2.2.3
"*Approved Annual Budget*" - 6.3.5
"*Approved Capital Budget*" - 6.3.5
"*Approved Operating Budget*" - 6.3.5
"*Award*" - 7.3.2
"*Bankruptcy Proceeding*" - 4.7
"*Borrower's Recourse Liabilities*" - 10.1
"*Capital Reserve Account*" - 3.4
"*Cash Accounts*" - 3.11
"*Casualty*" - 7.2.1
"*Casualty/Condemnation Prepayment*" - 2.3.2
"*Casualty/Condemnation Account*" - 3.8
"*Condemnation*" 7.3.1
"*Defeasance Collateral Account*" - *2.3.3*
"*Defeasance Event*" - *2.3.3*
"*Defeasance Date*" - *2.3.3*
"*Disclosure Document*" - 9.1.2
"*DSCR*" – 5.12.2
"*Easements*" - 4.14
"*Endorsement*" - 5.26.3
"*Environmental Laws*" - 4.21
"*Equipment*" - Mortgage
"*Event of Default*" - 8.1
"*Exchange Act*" - 9.1.2
"*Fitch*" - 1.1 (Definition of Rating Agency)
"*GCM Group*" - 9.1.3
"*Government Lists*" - 5.33
"*Hazardous Substances*" - 4.21
"*Improvements*" - Mortgage
"*Indemnified Liabilities*" - 5.30
"*Indemnified Party*" - 5.30
"*Insolvency Action*" – 10.1.3
"*Insurance Premiums*" - 7.1.2
"*Insured Casualty*" - 7.2.2
"*Issuer*" - 9.1.3
"*Late Payment Charge*" - 2.5.3
"*Leasing Reserve Account*" – 3.6
"*Lender's Losses*" – 10.1.2
"*Liabilities*" - 9.1.3
"*Licenses*" - 4.11
"*Loan*" - 2.1
"*Monthly Debt Service Payment Amount*" - 2.2.1
"*Monthly Interest Payment Amount*" - 2.2.1

"*Moody's*" - 1.1 (Definition of Rating Agency)
"*Mortgage*" - 1.1 (Definition of Loan Documents)
"*New Payment Date*" - 2.2.4
"*Note*" – 1.1(Definition of Loan Documents)
"*Notice*" - 6.1
"*O&M Program*" - 5.8.3
"*OFAC*" - 5.33
"*Patriot Act*" - 5.33
"*Patriot Act Offense*" - 5.33
"*Permitted Indebtedness*" - 5.22
"*Permitted Prepayment Date*" - 2.3.4
"*Policies*" - 7.1.2
"*Principal*" - 2.1
"*Proceeds*" - 7.2.2
"*Proposed Material Lease*" - 5.10.2
"*Protective Advances*" – 8.25
"*Provided Information*" - 9.1.1
"*Qualified Carrier*" - 7.1.1
"*Reasonable Attorney's Fees*" – 10.29
"*Registration Statement*" - 9.1.3
"*Remedial Work*" - 5.8.2
"*REMIC Provisions*" – 1.1 (Definition of U.S. Obligations)
"*Renewal Option Deadline*" – 3.6
"*Rent Roll*" - 4.16
"*Required Records*" - 6.3.6
"*Required Repairs*" - 3.2.1
"*Required Repairs Account*" - 3.2.2
"*Restoration*" - 7.4.1
"*Rollover Reserve Cap*" – 3.5
"*Rollover Reserve Account*" - 3.5
"*S&P*" - 1.1 (Definition of Rating Agency)
"*Secondary Market Transaction*" - 9.1.1
"*Securities*" - 9.1.1
"*Securities Act*" - 9.1.2
"*Security Deposit Account*" – 3.7
"*Significant Casualty*" - 7.2.2
"*Special Purpose Bankruptcy Remote Entity*" - Schedule 4
"*Springing Recourse Event*" - 10.1.3"
"*Substitute TIC Borrower*" - 5.26.2
"*Successor Borrower*" - 2.3.3
"*Tax and Insurance Account*" - 3.3.1
"*Termination Tenant*" – 3.6
"*TIC Borrowers*" - 5.26.2
"*TIC Owner*" - 5.26.2
"*TIC Transfer*" – 5.26.2
"*TIC Transfer and Assumption*" - 5.26.2

"*TIC Transfer Documents*" - 5.26.2
"*Toxic Mold*" - 4.21
"*Transfer and Assumption*" - 5.26.3
"*Transferee Borrower*" - 5.26.3
"*Underwriter Group*" - 9.1.3
"*Underwriters*" - 9.1.3

1.3 **Principles of Construction**. Unless otherwise specified, (i) all references to sections and schedules are to those in this Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined, (iv) the word "including" means "including but not limited to," and (v) accounting terms not specifically defined herein shall be construed in accordance with GAAP.

2. GENERAL LOAN TERMS

2.1 **The Loan**. Lender is making a loan (the "***Loan***") to Original Borrower on the date hereof, in the original principal amount (the "***Principal***") of $16,300,000, which shall mature on the Stated Maturity Date. Original Borrower acknowledges receipt of the Loan, the proceeds of which are being and shall be used to (i) acquire the Property, (ii) fund certain of the Accounts, and (iii) pay transaction costs. Any excess proceeds may be used for any lawful purpose. No amount repaid in respect of the Loan may be reborrowed.

2.2 **Interest; Monthly Payments**.

2.2.1 **Generally**.

(a) From and after the date of funding, interest on the unpaid Principal shall accrue at the Interest Rate and be payable as hereinafter provided.

(b) On the date hereof, Borrower shall pay interest on the unpaid Principal from the date of funding through and including January 5, 2008.

(c) On February 6, 2008 and each Payment Date thereafter through and including January 6, 2011, Borrowers shall pay to Lender all unpaid interest accrued on the Principal at the Interest Rate (the "***Monthly Interest Payment Amount***").

(d) On February 6, 2011 and each Payment Date thereafter through and including December 6, 2017, the Principal and interest thereon at the Interest Rate shall be payable in equal monthly installments of $$104,532.40 (the "***Monthly Debt Service Payment Amount***"); which is based on the Interest Rate and a 30 year amortization schedule; each of such payments to be applied (a) to the payment of interest computed at the rate aforesaid; and (b) the balance applied toward the reduction of the principal sum;

(e) All accrued and unpaid interest shall be due and payable on the Maturity Date. If the Loan is repaid on any date other than on a Payment Date (whether prior to or after

the Stated Maturity Date), Borrower shall also pay interest that would have accrued on such repaid Principal to but not including the next Payment Date.

2.2.2 Default Rate. After the occurrence and during the continuance of an Event of Default, the entire unpaid Debt shall bear interest at the Default Rate, and shall be payable upon demand from time to time, to the extent permitted by applicable law.

2.2.3 Taxes.

(a) Any and all payments by Borrower hereunder and under the other Loan Documents shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on Lender's income, and franchise taxes imposed on Lender by the law or regulation of any Governmental Authority (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to in this Section 2.2.3 as "*Applicable Taxes*").

(b) If any Borrower shall be required by law to deduct any Applicable Taxes from or in respect of any sum payable hereunder to Lender, the following shall apply: (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.2.3), Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. Payments pursuant to this Section 2.2.3 shall be made within ten days after the date Lender makes written demand therefor.

(c) Notwithstanding the foregoing, if the Loan is transferred to a transferee which is organized under the laws of any jurisdiction other than the United States of America or any state thereof, the transferor shall cause such transferee, concurrently with the effectiveness of such transfer, to furnish to the transferor and Borrowers either a United States Internal Revenue Service Form 4224 or United States Internal Revenue Service Form 1001 (wherein such transferee claims entitlement to complete exemption from United States federal withholding tax on all interest payments hereunder); provided, however, that in the event that the transferor fails to cause the transferee to furnish either such Form, Borrowers shall deduct any Applicable Taxes to the extent required by law and payments shall be made net of any Applicable Taxes without regard to the provisions of clause (i) of the second sentence of this Section 2.2.3.

2.2.4 New Payment Date. Lender shall have the right, to be exercised not more than once during the term of the Loan, to change the Payment Date to a date other than the 6th day of each month (a "*New Payment Date*"), on 30 days' written notice to Borrowers; provided, however, that any such change in the Payment Date: (i) shall not modify the amount of regularly scheduled monthly principal and interest payments, except that the first payment of principal and interest payable on the New Payment Date shall be accompanied by interest at the interest rate herein provided for the period from the Payment Date in the month in which the New Payment Date first occurs to the New Payment Date, and (ii) shall extend the Stated Maturity Date to the New Payment Date occurring in the month set forth in the definition of Stated Maturity Date.

2.3 Loan Repayment.

2.3.1 Repayment.

(a) Borrowers shall repay the entire outstanding Principal in full on the Maturity Date, together with interest thereon to the date of repayment and any other amounts due and owing under the Loan Documents. Borrowers shall have no right to prepay all or any portion of the Principal except in accordance with Section 2.3.2, Section 2.3.3, Section 2.3.4 and Section 2.4 below.

(b) Except during the continuance of an Event of Default, all proceeds of any repayment, including any prepayments of the Loan, shall be applied by Lender as follows in the following order of priority: *First*, accrued and unpaid interest at the Interest Rate; *Second*, to Principal; and *Third*, to any other amounts then due and owing under the Loan Documents.

(c) If prior to the Stated Maturity Date the Debt is accelerated by reason of an Event of Default, then Lender shall be entitled to receive, in addition to the unpaid Principal and accrued interest and other sums due under the Loan Documents, an amount equal to the Yield Maintenance Premium applicable to such Principal so accelerated. During the continuance of an Event of Default, all proceeds of repayment, including any payment or recovery on the Property (whether through foreclosure, deed-in-lieu of foreclosure, or otherwise) shall, unless otherwise provided in the Loan Documents, be applied in such order and in such manner as Lender shall elect in Lender's discretion.

2.3.2 Mandatory Prepayments. The Loan is subject to mandatory prepayment in certain instances of Insured Casualty or Condemnation (each a "***Casualty/Condemnation Prepayment***"), in the manner and to the extent set forth in Section 7.4.2. Each Casualty/Condemnation Prepayment, after deducting Lender's costs and expenses (including reasonable attorneys' fees and expenses) in connection with the settlement or collection of the Proceeds or Award, shall be applied in the same manner as repayments under Section 2.3.1, and if such Casualty/Condemnation Payment is made on any date other than a Payment Date, then such Casualty/Condemnation Payment shall include interest that would have accrued on the Principal prepaid to but not including the next Payment Date. Provided that no Event of Default is continuing, any such mandatory prepayment referred to in this Section 2.3.2 shall be without the payment of the Yield Maintenance Premium. Notwithstanding anything to the contrary contained herein, each Casualty/Condemnation Prepayment shall be applied in inverse order of maturity and shall not extend or postpone the due dates of the monthly installments due under the Note or this Agreement, or change the amounts of such installments.

2.3.3 Defeasance

(a) Conditions to Defeasance. Provided no Event of Default shall be continuing, Borrower shall have the right on any Payment Date after the Release Date and prior to the Permitted Prepayment Date to voluntarily defease the entire amount of the Principal and obtain a release of the Lien of the Mortgage by providing Lender with the Defeasance Collateral (a "***Defeasance Event***"), subject to the satisfaction of the following conditions precedent:

(i) Borrower shall give Lender not less than thirty (30) days prior written notice specifying a Payment Date (the "***Defeasance Date***") on which the Defeasance Event is to occur.

(ii) Borrower shall pay to Lender (A) all payments of Principal and interest due on the Loan to and including the Defeasance Date and (B) all other sums, then due under the Note, this Agreement and the other Loan Documents;

(iii) Borrower shall deposit the Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of subsections (b) and (c) of this Section 2.3.3;

(iv) Borrower shall execute and deliver to Lender a Security Agreement in respect of the Defeasance Collateral Account and the Defeasance Collateral;

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral, and (B) if a securitization has occurred, the REMIC Trust formed pursuant to such securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of a Defeasance Event pursuant to this Section 2.3.3;

(vi) if required by any Rating Agency, Borrower shall deliver to Lender a Rating Comfort Letter as to the Defeasance Event;

(vii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.3.3 have been satisfied;

(viii) Borrower shall deliver a certificate of a nationally recognized public accounting firm acceptable to Lender certifying that (A) the Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments, (B) the revenue from the Defeasance Collateral will be applied within four (4) months of receipt towards payments of Debt Service, (C) the securities that comprise the Defeasance Collateral are not subject to prepayment, call or early redemption and (D) the interest income to Borrower (or the Successor Borrower, if applicable) from the Defeasance Collateral will not in any tax year exceed the interest expense associated with the defeased Loan;

(ix) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;

(x) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including Lender's reasonable attorneys' fees and expenses and Rating Agency fees and expenses, and

(xi) At Lender's sole option, all obligations with respect to any Approved Mezzanine Loan shall have been fully paid and performed.

(b) **Defeasance Collateral Account**. On or before the date on which Borrower delivers the Defeasance Collateral, Borrower shall open at any Eligible Institution the defeasance collateral account (the "***Defeasance Collateral Account***") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (i) Defeasance Collateral, and (ii) cash from interest and principal paid on the Defeasance Collateral. All cash from interest and principal payments paid on the Defeasance Collateral shall be paid over to Lender on each Payment Date and applied first to accrued and unpaid interest and then to Principal. Any cash from interest and principal paid on the Defeasance Collateral not needed to pay accrued and unpaid interest or Principal shall be retained in the Defeasance Collateral Account as additional collateral for the Loan. Borrower shall cause the Eligible Institution at which the Defeasance Collateral is deposited to enter an agreement with Borrower and Lender, satisfactory to Lender in its sole discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Defeasance Collateral in accordance with this Agreement. The Successor Borrower shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower shall prepay all cost and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

(c) **Successor Borrower**. In connection with a Defeasance Event under this Section 2.3.3, Borrower shall, if required by the Rating Agencies or if Borrower elects to do so, establish or designate a successor entity (the "***Successor Borrower***") which shall be a Special Purpose Bankruptcy Remote Entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrower's option, be an Affiliate of Borrower unless the Rating Agencies shall require otherwise. Borrower shall transfer and assign all obligations, rights and duties under and to the Defeased Note, together with the Defeasance Collateral to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay a minimum of $1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorney's fees and expenses, incurred in connection therewith.

2.3.4 **Optional Prepayments**: From and after the third Payment Date prior to the Stated Maturity Date (the "**Permitted Prepayment Date**"), Borrower shall have the right to prepay all or any portion of the Principal, provided that Borrower gives Lender at least 15 days' prior written notice thereof. If any such prepayment is not made on a Payment Date, Borrower shall also pay interest that would have accrued on such prepaid Principal to, but not including, the next Payment Date. Any such prepayment from and after the Permitted Prepayment Date shall be made without payment of the Yield Maintenance Premium.

2.4 **Release of Property**.

2.4.1 **Release on Defeasance**. If Borrower has elected to defease the Note and the requirements of Section 2.3.3 above and this Section 2.4 have been satisfied, the Property shall be released from the Lien of the Mortgage and the Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection

with the release of the Lien, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of Lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and contain standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the release of the Lien of the Mortgage, including Lender's attorneys' fees.

2.4.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrowers, upon payment in full of the Debt in accordance herewith, release or, if requested by Borrowers, assign as directed by Borrowers (without any representation or warranty by and without any recourse against Lender whatsoever), the Lien of the Loan Documents if not previously released.

2.5 Payments and Computations.

2.5.1 Making of Payments. Each payment by a Borrower or Borrowers shall be made in funds settled through the New York Clearing House Interbank Payments System or other funds immediately available to Lender by 11:00 am., New York City time, on the date such payment is due, to Lender by deposit to such account as Lender may designate by written notice to Borrowers. Whenever any such payment shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day thereafter. All such payments shall be made irrespective of, and without any deduction, set-off or counterclaim whatsoever and are payable without relief from valuation and appraisement laws and with all costs and charges incurred in the collection or enforcement thereof, including reasonable attorneys' fees and court costs.

2.5.2 Computations. Interest payable under the Loan Documents shall be computed on the basis of the actual number of days elapsed over a 360-day year.

2.5.3 Late Payment Charge. If any Principal, interest or other sum due under any Loan Document is not paid by Borrowers on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by applicable law (the "*Late Payment Charge*"), in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Such amount shall be secured by the Loan Documents.

3. RESERVES

3.1 [Intentionally deleted].

3.2 Required Repairs.

3.2.1 Completion of Required Repairs. Borrowers shall perform and complete each item of the repairs and environmental remedial work at the Property described on Schedule 1 (the "*Required Repairs*") within six (6) months of the date hereof or such shorter period of time for such item set forth on Schedule 1.

3.2.2 Required Repairs Reserves. On the date hereof, Borrowers shall deposit with Lender the sum of $93,693 and Lender shall cause such amount to be transferred to a Account (the "*Required Repairs Account*"). Provided no Default or Event of Default shall have occurred and is continuing, Lender shall disburse funds held in the Required Repairs Account to Borrowers within fifteen (15) days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000, accompanied by the following items (which items shall be in form and substance reasonably satisfactory to Lender): (i) an Officer's Certificate (A) certifying that the Required Repairs or any portion thereof which are the subject of the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (B) identifying each Person that supplied materials or labor in connection with such Required Repairs or any portion thereof and (C) stating that each such Person has been or, upon receipt of the requested disbursement, will be paid in full with respect to the portion of the Required Repairs which is the subject of the requested disbursement; (ii) copies of appropriate Lien waivers or other evidence of payment satisfactory to Lender; (iii) at Lender's option, a title search for the Property indicating that it is free from all Liens not previously approved by Lender; (iv) a copy of each License required to be obtained with respect to the portion of the Required Repairs which is the subject of the requested disbursement; and (v) such other evidence as Lender shall reasonably request that the Required Repairs which are the subject of the requested disbursement have been completed and paid for. Provided no Default or Event of Default shall have occurred and is continuing, upon Borrowers' completion of all Required Repairs in accordance with this Section 3.2, Lender shall release any funds remaining in the Required Repairs Account, if any, to Borrowers.

3.3 Taxes and Insurance.

3.3.1 Borrowers shall pay to Lender on each Payment Date (i) one-twelfth of the Taxes that Lender estimates will be payable during the next 12 months in order to accumulate with Lender sufficient funds to pay all such Taxes at least 30 days prior to their respective due dates and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least 30 days prior to the expiration of the Policies. Such amounts will be transferred by Lender to a Account (the "*Tax and Insurance Account*"). Provided that no Default or Event of Default has occurred and is continuing, Lender will (a) apply funds in the Tax and Insurance Account to payments of Taxes and Insurance Premiums required to be made by Borrowers pursuant to Sections 5.2 and 7.1, provided that Borrowers have promptly supplied Lender with notices of all Taxes and Insurance Premiums due, or (b) reimburse Borrowers for such amounts upon presentation of evidence of payment; subject, however, to Borrowers' right to contest Taxes in accordance with Section 5.2. In making any payment relating to Taxes and Insurance Premiums, 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 Lender determines in its reasonable judgment that the funds in the Tax and Insurance Account will be insufficient to pay (or in excess of) the Taxes or Insurance Premiums next coming due, Lender may increase (or decrease) the monthly contribution required to be made by Borrowers to the Tax and Insurance Account.

3.4 Capital Expense Reserves. Borrowers shall pay to Lender on the date hereof the amount of $5,249, and on each Payment Date hereafter an amount equal to $5,249. Lender will transfer such amounts into a Account (the "**Capital Reserve Account**"). Upon thirty (30) days' prior notice to Borrowers, Lender may reassess the amount of the monthly payment required under this Section 3.4 from time to time in its reasonable discretion (based upon its then current underwriting standards). Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Capital Reserve Account to Borrowers, within 15 days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000 (or in the case of the final payment, in the full amount thereof) provided that (i) such disbursement is for an Approved Capital Expense; (ii) Lender shall have (if it desires) verified (by an inspection conducted at Borrowers' expense) performance of the work associated with such Approved Capital Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay or reimburse Borrowers for Approved Capital Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used to pay the previously identified Approved Capital Expenses, and (B) lien waivers or other evidence of payment satisfactory to Lender, (C) at Lender's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender and (D) such other evidence as Lender shall reasonably request that the Approved Capital Expenses at the Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrowers. Any such disbursement of more than $10,000 to pay (rather than reimburse) Approved Capital Expenses may, at Lender's option, be made by joint check payable to Borrowers and the payee on such Approved Capital Expenses. Lender shall deposit the funds in the Capital Reserve Account, as received, in an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time. (Such funds shall include the funds in the Capital Reserve Account, the account, all interest on any funds referred to herein, and all proceeds of any of the foregoing). Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. All interest earned on the funds in the Capital Reserve Account shall be added to and become part of such funds and shall be for the benefit of Borrower. Lender shall not be responsible for any losses resulting from the investment of such funds or for obtaining any specific level or percentage of interest earnings on such investment.

3.5 Rollover Reserves.

(a) Upon the making of the Loan, Borrowers shall make an initial deposit with Lender in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00). Lender will transfer such amount to a Account (the "***Rollover Reserve Account***"). On each Payment Date commencing on the thirty-seventh (37th) Payment Date, Borrowers shall deposit with Lender the sum of $21,086.50 (the "***Monthly Rollover Deposit***") and Lender shall cause such amount to be transferred to the Rollover Reserve Account; provided, however, that if the balance in the Rollover Reserve Account is less than $250,000 at any time prior to the forty-ninth (49th) Payment Date, the Borrower shall commence making the Monthly Rollover Deposit on the next succeeding Payment Date and shall continue making such deposits until the balance again equals not less than $250,000. Borrowers shall also pay to Lender for transfer into the Rollover Reserve Account all Lease Termination Payments received by Borrowers. If Lender determines in its reasonable judgment that the funds in the Rollover Reserve Account will be insufficient to pay (or in excess of) the amounts due or to become due for Approved Leasing Expenses, Lender may increase (or decrease) the monthly contribution required to be made by Borrowers to the Rollover Reserve Account. Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Rollover Reserve Account to Borrowers upon Borrower's written request to Lender, within 15 days after the delivery by Borrowers to Lender of a request therefor (but not more often than once per month), in increments of at least $5,000, (or in the case of the final payment, in the full amount thereof) provided (i) such disbursement is for an Approved Leasing Expense; (ii) Lender shall have (if it desires) verified (by an inspection conducted at Borrowers' expense) performance of any construction work associated with such Approved Leasing Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used only to pay (or reimburse Borrowers for) Approved Leasing Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used only to pay (or reimburse Borrowers for) the previously identified Approved Leasing Expenses, and (B) reasonably detailed supporting documentation as to the amount, necessity and purpose therefor. Any such disbursement of more than $10,000 to pay (rather than reimburse) Approved Leasing Expenses may, at Lender's option, be made by joint check payable to Borrowers and the payee of such Approved Leasing Expenses. Lender shall deposit the funds in the Rollover Reserve Account, as received, in an interest-bearing account which meets the standards for custodial accounts as required by Lender from time to time. (Such funds shall include the funds in the Rollover Reserve Account, the account, all interest on any funds referred to herein, and all proceeds of any of the foregoing). Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. All interest earned on the funds in the Rollover Reserve Account shall be added to and become part of such funds and shall be for the benefit of Borrower. Lender shall not be responsible for any losses resulting from the investment of such funds or for obtaining any specific level or percentage of interest earnings on such investment.

(b) Any Lease Termination Payments and any other funds deposited into the Rollover Reserve Account shall be applied, at Lender's election, towards either (a) subject to the rights of Borrower under the applicable Lease, rent arrearages under such Lease (or to cure any other tenant default under such Lease), (b) debt service shortfalls that may arise as a result of a termination of such Lease (and Borrower hereby authorizes Lender to disburse to itself any such

amounts without any request therefor by Borrower) or (c) funding any Approved Leasing Expenses which are anticipated to occur in connection with the re-tenanting of the space under the Lease that was the subject of such termination.

3.6 Leasing Reserve. Upon the making of the Loan, Borrowers shall make an initial deposit with Lender in the amount of Fifty Thousand Dollars ($50,000.00). Lender will transfer such amount to a Account (the "*Leasing Reserve Account*"). Provided that no Default or Event of Default has occurred and is continuing, Lender shall disburse funds held in the Leasing Reserve Account to Borrowers upon Borrower's written request to Lender, within 15 days after the delivery by Borrowers to Lender of a request therefor, at such time as Borrowers have effectuated all rental increases under currently effective Leases of the Property scheduled to occur on or before May, 31, 2008 and Borrower shall have collected from each applicable Tenant the first such increased rental payment.

3.7 Security Deposits. After the occurrence of an Event of Default, Borrower shall deliver to Lender all security deposits (and any interest theretofore earned thereon) under Leases, and, if requested by Lender, Borrower shall also deliver any letters of credit (delivered in lieu of a cash security deposit), assigned with full power of attorney and executed sight drafts to Lender. Lender will transfer such security deposits into an Account (the "*Security Deposit Account*"), which will be held subject to the terms of the Leases. Borrower shall also deliver to Lender (for deposit into the Security Deposit Account) all amounts drawn under any letters of credit held by Borrower in lieu of cash security deposits. Regardless of whether an Event of Default exists and is continuing, any security deposits held in the Security Deposit Account will be released by Lender upon notice from Borrower together with such evidence as Lender may reasonably request that such security deposit is required to be returned to a tenant pursuant to the terms of a Lease. Any funds in the Security Deposit Account which Borrower is permitted to retain pursuant to the applicable provisions of any Lease shall be transferred by Lender into the Rollover Reserve Account, to be applied and disbursed in accordance with the provisions of Section 3.5 hereof. Any letter of credit or other instrument that Borrower receives in lieu of a cash security deposit under any Lease entered into after the date hereof shall (i) be maintained in full force and effect in the full amount unless replaced by a cash deposit as hereinabove described and (ii) if permitted pursuant to any Legal Requirements, name Lender as payee or mortgagee thereunder (or at Lender's option, be fully assignable to Lender)..

3.8 Borrower shall pay, or cause to be paid, to Lender all Proceeds or Awards due to any Casualty or Condemnation to be transferred to a Account (the "*Casualty/Condemnation Account*") in accordance with the provisions of Article 7 hereof. All amounts in the Casualty/Condemnation Account shall disbursed in accordance with the provisions of Article 7 hereof..

3.9 [Intentionally deleted].

3.10 [Intentionally deleted].

3.11 Grant of Security Interest; Application of Funds. As security for payment of the Debt and the performance by Borrowers of all other terms, conditions and provisions of the Loan Documents, each Borrower hereby pledges and assigns to Lender, and grants to Lender a

security interest in, all such Borrower's right, title and interest in and to all Rents and in and to all payments to or monies held in all Accounts created pursuant to this Agreement, which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (collectively, the "***Cash Accounts***"). No Borrower shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Cash Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default, Lender may apply any sums in any Cash Account in any order and in any manner as Lender shall elect in Lender's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Lender to foreclose the Lien of the Mortgage or exercise its other rights under the Loan Documents. Cash Accounts shall not constitute trust funds and may be commingled with other monies held by Lender. All interest which accrues on the funds in any Cash Account (other than the Tax and Insurance Account) shall accrue for the benefit of Borrowers and shall be taxable to Borrowers and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon repayment in full of the Debt, all remaining funds in the Accounts, if any, shall be promptly disbursed to Borrowers.

4. REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to Lender as of the date hereof that, except to the extent (if any) disclosed on Schedule 2 with reference to a specific Section of this Article 4:

4.1 **Organization; Special Purpose**. Each Borrower has been duly organized and is validly existing and in good standing under the laws of the state of Delaware, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Each Borrower is or will be duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Each Borrower is a Special Purpose Bankruptcy Remote Entity.

4.2 **Proceedings; Enforceability**. Each Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents. The Loan Documents have been duly executed and delivered by each Borrower that is a party to such Loan Document and constitute legal, valid and binding obligations of such Borrower enforceable against such Borrower in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents are not subject to, and no Borrower has asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Loan Documents, or any right thereunder, will render any Loan Document unenforceable.

4.3 **No Conflicts**. The execution, delivery and performance of the Loan Documents by Borrowers and the transactions contemplated hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation

or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property of any Borrower pursuant to the terms of, any agreement or instrument to which any Borrower is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over any Borrower or any of its properties. No Borrower's rights under the Licenses and the Property Agreements will be adversely affected by the execution and delivery of the Loan Documents, any Borrower's performance thereunder, the recordation of the Mortgage, or the exercise of any remedies by Lender. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by any Borrower of the Loan Documents has been obtained and is in full force and effect.

4.4 **Litigation**. There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting any Borrower or the Property, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of any Borrower (including the ability of such Borrower to carry out its obligations under the Loan Documents), Manager, or the condition or ownership of the Property.

4.5 **Agreements**. No Borrower is a party to any agreement or instrument or subject to any restriction which might materially, adversely affect any Borrower or the Property, or any Borrower's business, properties, operations or condition, financial or otherwise. No Borrower is in default in any material respect in the performance, observance or fulfillment of any agreement or instrument to which any Borrower is a party or by which any Borrower or the Property is bound.

4.6 **Title**. Borrowers have good, marketable and indefeasible title in fee to the real property and good title to the balance of the Property, free and clear of all Liens except the Permitted Encumbrances.

4.7 **No Bankruptcy Filing**. No Borrower is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "***Bankruptcy Proceeding***"), and Borrowers have no actual knowledge of any Person contemplating the filing of any such petition against any Borrower.

4.8 **Full and Accurate Disclosure**. No statement of fact made by any Borrower in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not materially and substantially misleading. There is no material fact presently actually known to any Borrower that has not been disclosed to Lender which adversely affects, or, to Borrower's knowledge, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of any Borrower. To Borrowers' actual knowledge, all financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrowers and the Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Borrower and the Property as of the date

of such reports, and (iii) to the extent prepared in accordance with GAAP standards, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Since the date of such financial statements, there has been no material, adverse change in the financial condition, operations or business of any Borrower or the Property from that set forth in said financial statements.

4.9 Tax Filings. To the extent required, each Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower.

4.10 No Plan Assets. As of the date hereof and throughout the Term (i) no Borrower is or will be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (ii) none of the assets of any Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) no Borrower is or will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with any Borrower are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans. As of the date hereof, no Borrower, nor any member of a "controlled group of corporations" (within the meaning of Section 414 of the Code) maintains, sponsors or contributes to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA) or a "multiemployer pension plan" (within the meaning of Section 3(37)(A) of ERISA).

4.11 Compliance. To each Borrowers' actual knowledge, each Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements (including with respect to parking and applicable zoning and land use laws, regulations and ordinances). No Borrower is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of any Borrower. The Property is used exclusively as a commercial business park and other appurtenant and related uses. In the event that all or any part of the Improvements are destroyed or damaged said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. To Borrower's actual knowledge, no legal proceedings are pending or, threatened with respect to the zoning of the Property. To Borrower's actual knowledge, neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. To Borrower's actual knowledge, all certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property (collectively, the "*Licenses*"), have been obtained and are in full force and effect. To Borrower's actual knowledge, the use being made of the Property is in substantial conformity with all other restrictions, covenants and conditions affecting the Property.

4.12 Contracts. There are no service, maintenance or repair contracts affecting the Property that are not terminable on one month's notice or less without cause and without penalty or premium. To Borrower's actual knowledge, all service, maintenance or repair contracts

affecting the Property have been entered into at arms-length in the ordinary course of business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

4.13 Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document. No Borrower is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) 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 (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

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

4.15 Physical Condition. To Borrower's actual knowledge, the Property, including all Improvements, parking facilities, systems, Equipment and landscaping, are in good condition, order and repair in all material respects; there exists no structural or other material defect or damages to the Property, whether latent or otherwise. No Borrower has received actual notice from any insurance company or bonding company of any defect or inadequacy in the Property, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. To Borrower's actual knowledge, no portion of the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards. To Borrower's actual knowledge, the Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

4.16 Leases.

(a) To Borrower's actual knowledge, the rent roll attached hereto as Schedule 7 (the "*Rent Roll*") is true, complete and correct and the Property is not subject to any Leases other than the Leases described in the Rent Roll.

(b) Except as set forth on the Rent Roll: (i) each Lease is in full force and effect; (ii) the tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises, have commenced the payment of rent under the Leases, and there are no offsets, claims or defenses to the enforcement thereof; (iii) all rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than 30 days in advance; (iv) the rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by the tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under any Lease which remains outstanding, there are no defaults on the part of the landlord under any Lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; (vi) to Borrowers' actual knowledge, there is no present material default by the tenant under any Lease; (vii) all security deposits under Leases are as set forth on the Rent Roll; (viii) Borrowers are the sole owner of the entire lessor's interest in each Lease; (ix) each Lease is the valid, binding and enforceable obligation of such Borrower and the applicable tenant thereunder; (x) no Person has any possessory interest in, or right to occupy, the Property except under the terms of the Lease; and (xi) each Lease is subordinate to the Loan Documents, either pursuant to its terms or pursuant to a subordination and attornment agreement.

(c) None of the Leases contains any option to purchase or right of first refusal to purchase the Property or any part thereof.

(d) Neither the Leases nor the Rents have been assigned or pledged except to Lender, and no other Person has any interest therein except the tenants thereunder.

4.17 **Fraudulent Transfer**. No Borrower has entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrowers have received reasonably equivalent value in exchange for their obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrowers' assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrowers' total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured (excluding any joint liability under the Loan Documents in excess of the applicable Borrower's general liability thereunder). Borrowers' assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out their business as conducted or as proposed to be conducted. No Borrower intends to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of such Borrower) (excluding any joint liability under the Loan Documents in excess of the applicable Borrower's general liability thereunder).

4.18 **Ownership Structure.**

(a) Neither Original Borrower nor Fund Manager has any obligation to any Person to purchase, repurchase or issue any ownership interest in Original Borrower or Fund Manager.

(b) The organizational chart attached hereto as Schedule 3 is complete and accurate and illustrates all Persons who have a direct or indirect ownership interest in Original Borrower.

4.19 **Purchase Options**. Except for purchase agreements for the sale of tenant in common interests in the Property which do not violate the terms of the Loan Documents, neither the Property nor any part thereof is subject to any purchase options or other similar rights in favor of third parties.

4.20 **Management Agreement**. The Management Agreement is in full force and effect. There is no default, breach or violation existing thereunder, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation thereunder, by either party thereto. Pursuant to the Management Agreement, Borrowers have appointed the Manager as their agent for (i) hiring, terminating (subject to the provisions thereof), overseeing and otherwise dealing with any sub-property manager for the Property, (ii) otherwise overseeing the day to day operation and management of the Property, and (iii) subject to those material decisions reserved to the tenants in common under the Management Agreement, making decisions and otherwise interacting and dealing with Lender with respect to the Loan, this Agreement, the other Loan Documents and the Property. Additionally, the Manager has control of all operating and other bank accounts with respect to the Property.

4.21 **Hazardous Substances**. To Borrower's actual knowledge, based solely upon the environmental report delivered to Lender in connection herewith, (i) the Property is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (collectively, "***Environmental Laws***"); (ii) the Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic and/or dangerous substances, toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property ("***Toxic Mold***") or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "***Hazardous Substances***"); (iii) no Hazardous Substances are or have been (including the period prior to such Borrower's acquisition of the Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws; (iv) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Property; (v) no Toxic Mold is on or about the Property which requires remediation; and (vi) no underground storage tanks exist on the Property and the Property has never been used as a landfill. There have been no environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of any Borrower which have not been provided to Lender.

4.22 Name. No Borrower uses or will use any trade name or has done or will not do business under any name other than its actual name set forth herein. The principal place of business of Borrower is its primary address for notices as set forth in Section 6.1, and Borrower has no other place of business.

4.23 Other Debt. There is no indebtedness with respect to the Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than Permitted Encumbrances and Permitted Indebtedness.

4.24 Tenant in Common Agreement.

(a) The Tenancy-in-Common Agreement dated substantially concurrently herewith executed by the parties constituting Borrower (the "*Tenant in Common Agreement*") is in full force and effect and has not been modified or amended.

(b) There are no defaults under the Tenant in Common Agreement, and to Borrower's actual knowledge, no event has occurred, which with the passage of time, the giving of notice, or both, would constitute a default under the Tenant in Common Agreement.

(c) The Tenant in Common Agreement provides that, so long as the Loan or any portion thereof is outstanding, each tenant in common agrees that it will not seek or be entitled to seek and obtain a partition of all or any part of the Property without first obtaining the prior written consent of Lender, and each tenant in common expressly waives any right it may have to partition the Property or any part thereof, unless Lender has consented in writing to such party's exercise of such rights.

(d) The Tenant in Common Agreement provides that each tenant in common agrees that the Tenant in Common Agreement, and all rights and privileges and remedies of each tenant in common thereunder, including without limitation, any rights of indemnification, first refusal, purchase options or other similar rights under the Tenant in Common Agreement, are subject and subordinate to the Instrument and the other Loan Documents and the Liens created thereby, and to all rights of the Lender thereunder.

(e) The Tenant in Common Agreement provides that no party thereunder may exercise any remedy provided for therein (including any rights of indemnification) against any other party for as long as the Loan (or any portion thereof) is outstanding.

(f) The Tenant in Common Agreement provides that each tenant in common waives, for so long as the Loan (or any portion thereof) is outstanding, any lien rights, whether statutory or otherwise, that it may have against the co-tenancy interest of any other tenant in common.

(g) The Tenant in Common Agreement provides that for so long as the Loan (or any portion thereof) is outstanding, Lender shall be a third party beneficiary of the Tenant in Common Agreement.

(h) The Tenant in Common Agreement provides that Borrower shall not, without the prior consent of Lender, terminate or cancel the Tenant in Common Agreement or

modify, change, supplement, alter or amend the Tenant in Common Agreement in any manner whatsoever and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Tenant in Common Agreement without the prior consent of Lender shall be void and of no force and effect.

(i) To the best of Borrower's knowledge, no securities laws have been violated in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no tenant in common or any of its affiliates has made any material untrue statement in any offering memorandum or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or has omitted any material fact or information from any such materials. Each tenant in common shall and shall cause all of its affiliates to comply with any and all securities laws in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no tenant in common or any of its affiliates shall include any material untrue statement in any offering memorandum or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or shall omit any material fact or information from any such materials.

4.25 Securities Laws Compliance. To Original Borrowers' knowledge, no Securities Laws have been violated in connection with the issuing, selling, transferring or marketing of tenancy in common interests, and no material untrue statement has been made in any investment summary or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or has omitted any material fact or information from any such materials. Original Borrower shall and shall cause all of its Affiliates to comply with any and all securities laws in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no material untrue statement shall be made in any investment summary or other materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest nor shall any material fact or information be omitted from any such materials.

All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender (although they shall be deemed made on the date actually given) and (ii) shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.21 shall survive in perpetuity. Notwithstanding anything to the contrary contained herein, it is understood and agreed that any representation made by Borrowers relating to a Borrower shall be deemed made only by such Borrower with respect to itself and not by any other Borrower and upon the assumption of this Loan Agreement by any additional Borrower, then by such Borrower with respect to itself. All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents are effective as of the date given, and shall not be deemed re-given absent separate written agreement to that effect by any Borrower.

5. COVENANTS

Until the end of the Term, Borrowers hereby covenant and agree with Lender that:

5.1 Existence. Each Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all Licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.2 Taxes and Other Charges. Borrowers shall pay all Taxes and Other Charges as the same become due and payable, and deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid no later than 30 days before they would be delinquent if not paid (provided, however, that Borrowers need not pay such Taxes nor furnish such receipts for payment of Taxes paid by Lender pursuant to Section 3.3). Borrowers shall not suffer and shall promptly cause to be paid and discharged any Lien against the Property, and shall promptly pay (or cause to be paid)for all utility services provided to the Property. After prior notice to Lender, Borrowers, at their own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and is continuing, (ii) such proceeding shall suspend the collection of the Taxes or such Other Charges, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which any Borrower is subject and shall not constitute a default thereunder, (iv) no part of or interest in the Property will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrowers shall have furnished such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, which shall not be less than 125% of the Taxes and Other Charges being contested, and (vi) Borrowers shall promptly upon final determination thereof pay the amount of such Taxes or Other Charges, together with all costs, interest and penalties. Lender may pay over any such security or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

5.3 Access to Property. Borrowers shall permit agents, representatives, consultants and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.4 Repairs; Maintenance and Compliance; Alterations.

5.4.1 Repairs; Maintenance and Compliance. Borrowers, in a commercially reasonable manner, shall at all times maintain, preserve and protect all franchises and trade names, and shall cause the Property to be maintained in a commercially reasonable condition and repair and shall not remove, demolish or alter the Improvements or Equipment (except for (i) alterations performed in accordance with Section 5.4.2, (ii) alterations in connection with tenant improvements accomplished pursuant to any Lease and (iii) normal replacement of Equipment with Equipment of equivalent value and functionality). Borrowers shall promptly comply with all Legal Requirements and immediately cure properly any violation of a Legal Requirement. Borrowers shall use reasonable efforts to notify Lender in writing during a commercially reasonable time period after any Borrower first receives notice of any such non-compliance.

Borrowers shall repair, replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

5.4.2 Alterations. Borrowers may, without Lender's consent, perform alterations to the Improvements and Equipment which (i) do not constitute a Material Alteration, (ii) do not adversely affect any Borrower's financial condition or the value or Net Operating Income of the Property and (iii) are in the ordinary course of Borrowers' business. No Borrower shall perform any Material Alteration without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Lender may, in its sole and absolute discretion, withhold consent to any alteration the cost of which is reasonably estimated to exceed $1,000,000 or which is likely to result in a decrease of Net Operating Income by 2.5% or more for a period of 30 days or longer. Lender may, as a condition to giving its consent to a Material Alteration, require that Borrowers deliver to Lender security for payment of the cost of such Material Alteration in an amount equal to 125% of the cost of the Material Alteration as estimated by Lender. Upon substantial completion of the Material Alteration, Borrowers shall provide evidence satisfactory to Lender that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements and substantially in accordance with plans and specifications approved by Lender (which approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of lien and (iii) all material Licenses necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Borrowers shall reimburse Lender upon demand for all out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Lender) incurred by Lender in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section 5.4.2.

5.5 Performance of Other Agreements. Borrowers shall observe and perform each and every term to be observed or performed by one or more Borrowers pursuant to the terms of any agreement or instrument affecting or pertaining to the Property, including the Loan Documents and the Property Agreements.

5.6 Cooperate in Legal Proceedings. Borrowers shall provide Lender reasonable notice of any proceedings before any Governmental Authority which may in any material way affect the rights of Lender under any Loan Document.

5.7 Further Assurances. Borrowers shall, at Borrowers' sole cost and expense, (i) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Debt and/or for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Lender may reasonably require from time to time; and (ii) upon Lender's request therefor given from time to time after the occurrence of any Default or Event of Default pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to any Borrower and (a) searches of title to the Property, each such search to be conducted by search firms

reasonably designated by Lender in each of the locations reasonably designated by Lender, provided, however, Borrower shall have no obligation to do any of the foregoing if it creates an unreasonable burden or creates liability beyond that originally contemplated by the Loan Documents.

5.8 Environmental Matters.

5.8.1 Hazardous Substances. So long as one or more Borrowers owns or is in possession of the Property, each such Borrower shall (i) keep the Property free from Hazardous Substances and in compliance with all Environmental Laws, (ii) promptly notify Lender if such Borrower shall gain actual knowledge that (A) any Hazardous Substance is on or near the Property, (B) the Property is in violation of any Environmental Laws or (C) any condition on or near the Property shall pose a threat to the health, safety or welfare of humans and (iii) remove from the Property such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law. Nothing herein shall prevent such Borrower from recovering such expenses from any other party that may be liable for such removal or cure.

5.8.2 Environmental Monitoring.

(a) Upon obtaining actual knowledge thereof, Borrowers shall give prompt written notice to Lender of (i) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Substance on, under, from or about the Property, (ii) all claims made or threatened by any third party (including any Governmental Authority) against any Borrower or the Property or any party occupying the Property relating to any loss or injury resulting from any Hazardous Substance. Upon becoming aware of the presence of mold or fungus at the Property, that violates applicable Environmental Laws, Borrowers shall (i) undertake an investigation to identify the source(s) of such mold or fungus and shall develop and implement an appropriate remediation plan to eliminate the presence of any Toxic Mold, (ii) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold (including taking any action necessary to clean and disinfect any portions of the Property affected by Toxic Mold, including providing any necessary moisture control systems at the Property), and (iii) provide evidence reasonably satisfactory to Lender of the foregoing. Borrowers shall give Lender prior notice of any legal or administrative proceedings or other actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Borrowers shall pay all reasonable attorneys' fees and disbursements incurred by Lender in connection therewith.

(b) Upon Lender's request, after Borrower or Lender shall have received knowledge of a pending or threatened legal or administrative proceeding or claim regarding Hazardous Substances or violation of Environmental Laws, Borrowers shall pay for the reasonable cost of an inspection or audit of the Property prepared by Lender's Consultant assessing the presence or absence of Hazardous Substances on, in or near the Property, . Such inspections and audit may include soil bearings and ground water monitoring. If Borrowers fail to provide any such inspection or audit within 30 days after such request, Lender may order same, and Borrowers hereby grant to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit. Lender shall use all reasonable efforts not to violate the terms and provision of any Leases in connection with any of the foregoing.

(c) If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Substance, whether such Hazardous Substance existed prior to the ownership of the Property by any Borrower, or presently exists or is reasonably suspected of existing, Borrowers shall cause such operations and maintenance plan to be prepared and implemented at their expense upon request of Lender, and with respect to any Toxic Mold, Borrowers shall take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the Property. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind is required under an applicable Environmental Law ("***Remedial Work***"), Borrowers shall commence all such Remedial Work within 30 days after written demand by Lender and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required under applicable law). All Remedial Work shall be performed by licensed contractors approved in advance by Lender and under the supervision of a consulting engineer approved by Lender. All costs of such Remedial Work shall be paid by Borrowers, including Lender's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Borrowers do not timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall not be obligated to) cause such Remedial Work to be performed at Borrowers' expense. Notwithstanding the foregoing, Borrowers shall not be required to commence such Remedial Work within the above specified time period: (x) if prevented from doing so by any Governmental Authority, (y) if commencing such Remedial Work within such time period would result in any Borrower or such Remedial Work violating any Environmental Law, or (z) if Borrowers, at their expense and after prior written notice to Lender, are contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Borrowers shall have the right to contest the need to perform such Remedial Work, provided that, (1) Borrowers are permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither the Property nor any part thereof or interest therein will be sold, forfeited or lost if a Borrower fails to promptly perform the Remedial Work being contested, and if such Borrower fails to prevail in such contest Borrower would thereafter have the opportunity to perform such Remedial Work, (3) Lender would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Borrowers have not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither the Property nor any interest therein would be subject to the imposition of any Lien for which Borrowers have not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work and (4) Borrowers shall have furnished to Lender additional security in respect of the Remedial Work being contested and the loss or damage that may result from Borrowers' failure to prevail in such contest in such amount as may be reasonably requested by Lender but in no event less than one hundred twenty-five percent (125%) of the cost of such Remedial Work as estimated by Lender or Lender's Consultant and any loss or damage that may result from Borrowers' failure to prevail in such contest.

(d) No Borrower shall install or permit to be installed on the Property any underground storage tank without Lender's prior, express written consent.

5.8.3 O & M Program. In the event any environmental report delivered to Lender in connection with the Loan recommends the development of or continued compliance with an operation and maintenance program for the Property (including, without limitation, with respect to the presence of asbestos and/or lead-based paint) ("*O & M Program*"), Borrower shall develop (or continue to comply with, as the case may be) such O & M Program and shall, during the term of the Loan, including any extension or renewal thereof, comply in all material respects with the terms and conditions of the O & M Program.

5.9 Title to the Property. Borrowers will warrant and defend the title to the Property as insured in Borrower's name, and the validity and priority of all Liens granted or otherwise given to Lender under the Loan Documents, subject only to Permitted Encumbrances, against the claims of all Persons.

5.10 Leases.

5.10.1 Generally. Upon request, Borrowers shall furnish Lender with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party tenants.

5.10.2 Material Leases. No Borrower shall enter into a proposed Material Lease or a proposed renewal, extension or modification of an existing Material Lease without the prior written consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed. Prior to seeking Lender's consent to any Material Lease, Borrowers shall deliver to Lender a copy of such proposed lease (a "*Proposed Material Lease*") blacklined to show changes from the standard form of Lease approved by Lender and then being used by Borrowers. Lender shall approve or disapprove each Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease for which Lender's approval is required under this Agreement within 10 Business Days of the submission by Borrowers to Lender of a written request for such approval, accompanied by a final copy of the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. If requested by Borrowers, Lender will grant conditional approvals of Proposed Material Leases or proposed renewals, extensions or modifications of existing Material Leases at any stage of the leasing process, from initial "term sheet" through negotiated lease drafts, provided that Lender shall retain the right to disapprove any such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease, if subsequent to any preliminary approval material changes are made to the terms previously approved by Lender, or additional material terms are added that had not previously been considered and approved by Lender in connection with such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. Provided that no Event of Default is continuing, if Borrowers provide Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.2 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrowers within 10 Business Days after receipt by Lender of the request, the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease shall be deemed approved by Lender, and Borrowers shall be entitled to enter into such Proposed Material Lease or proposed renewal, extension or

modification of an existing Material Lease. Notwithstanding anything to the contrary in this Section 5.10.2, unless expressly agreed to in writing by Lender, any approval or deemed approval by Lender of a Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease pursuant to this Section 5.10.2 shall not be deemed to constitute an approval or deemed approval by Lender of any Approved Leasing Expenses payable in connection therewith.

5.10.3 Minor Leases. Notwithstanding the provisions of Section 5.10.2 above, provided that no Event of Default is continuing, renewals, amendments and modifications of existing Leases and proposed leases shall not be subject to the prior approval of Lender provided (i) the proposed lease would be a Minor Lease or the existing Lease as amended or modified or the renewal Lease is a Minor Lease, (ii) the proposed lease shall be written substantially in accordance with the standard form of Lease which shall have been approved by Lender, (iii) the Lease as amended or modified or the renewal Lease or series of leases or proposed lease or series of leases: (a) shall provide for net effective rental rates comparable to existing local market rates, (b) shall have an initial term (together with all renewal options) of not less than three years or greater than ten years, (c) shall provide for automatic self-operative subordination to the Mortgage and, at Lender's option, (x) attornment to Lender and (y) the unilateral right by Lender, at the option of Lender, to subordinate the Lien of the Mortgage to the Lease, and (d) shall not contain any option to purchase, or any right of first refusal to purchase. Borrowers shall deliver to Lender copies of all Leases which are entered into pursuant to the preceding sentence together with Borrowers' certification that it has satisfied all of the conditions of the preceding sentence within ten days after the execution of the Lease. With respect to any Lease or proposed renewal, extension or modification of an existing Lease that requires Lender's consent under this Section 5.10.3, provided that no Event of Default is continuing, if Borrower provides Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.3 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrower within 10 Business Days after receipt by Lender of the request, the proposed Lease or proposed renewal, extension or modification of an existing Lease shall be deemed approved by Lender, and Borrower shall be entitled to enter into such proposed Lease or proposed renewal, extension or modification of an existing Lease; provided, however that, unless expressly agreed to in writing by Lender, any such approval of deemed approval shall not be deemed to constitute an approval or deemed approval by Lender of any Approved Leasing Expenses payable in connection therewith.

5.10.4 Additional Covenants with respect to Leases. Each Borrower (i) shall observe and perform the material obligations imposed upon the lessor under the Leases and shall not do or permit 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 that such Borrower shall send or receive under any Lease; (iii) shall enforce, in accordance with commercially reasonable practices for properties similar to the Property, the terms, covenants and conditions in the Leases to be observed or performed by the lessees, short of termination thereof; (iv) shall not collect any of the Rents more than one month in advance (other than security deposits or similar deposits or reserves); (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (vi) shall not modify any Lease in a manner inconsistent with the Loan Documents; (vii) shall not convey or transfer or suffer or

permit a conveyance or transfer of the Property so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees under Leases; (viii) shall not consent to any assignment of or subletting under any Material Lease unless required in accordance with its terms without the prior consent of Lender, which, with respect to a subletting, may not, so long as no Event of Default is continuing, be unreasonably withheld or delayed; and (ix) shall not cancel or terminate any Lease or accept a surrender thereof (except in the exercise of Borrowers' commercially reasonable judgment in connection with a tenant default under a Minor Lease) without the prior consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed.

5.11 [Intentionally deleted].

5.12 Property Management.

5.12.1 Management Agreement.

(a) Borrowers shall (i) cause the Property to be managed pursuant to the Management Agreement; (ii) promptly perform and observe all of the covenants required to be performed and observed by them under the Management Agreement and do all things necessary to preserve and to keep unimpaired their rights thereunder; (iii) promptly notify Lender of any default under the Management Agreement of which they are aware; (iv) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditure plan, and property improvement plan, any notice of default and, to the extent reasonably requested by Lender, any other notice, report and estimate received by any Borrower under the Management Agreement; and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement. Except as to those matters expressly reserved to the tenant in common owners, the Manager shall be granted in the Management Agreement sole and exclusive authority with respect to the day-to-day operation of the Property (including control of all accounts with respect to the Property).

(b) Without Lender's prior written consent, no Borrower shall (i) surrender, terminate, fail to renew, cancel, extend or renew the Management Agreement or otherwise replace the Manager or enter into any other management agreement (except pursuant to Section 5.12.2 or Section 5.12.3); (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release any of its rights and remedies under, the Management Agreement; (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement); or (vi) suffer or permit the ownership, management or Control of Manager to be transferred to a Person other than an Affiliate of U.S. Advisors except as permitted herein. Lender shall be a third-party beneficiary of the Management Agreement, and at all times the Management Agreement shall be subordinated to the Mortgage pursuant to an agreement in form and substance acceptable to Lender.

5.12.2 Termination of Manager. If (i) an Event of Default shall be continuing, or (ii) Manager is in default under the Management Agreement, or (iii) upon the gross negligence, malfeasance or willful misconduct of the Manager, Borrowers shall, at the request of Lender, terminate the Management Agreement and replace Manager with a replacement manager acceptable to Lender in Lender's discretion and the applicable Rating Agencies on terms and conditions satisfactory to Lender and the applicable Rating Agencies. Borrowers' failure to appoint an acceptable manager within thirty (30) days after Lender's request of Borrowers to terminate the Management Agreement shall constitute an immediate Event of Default. Borrower may from time to time appoint a successor manager to manage the Properties, which successor manager and Management Agreement shall be approved in writing by Lender in Lender's discretion and the applicable Rating Agencies.

5.12.3 Successor Manager. Borrowers may from time to time elect to terminate the existing Management Agreement in accordance with the Tenant in Common Agreement and appoint a successor manager to manage the Property. Any successor manager and Management Agreement shall be approved, prior to the effective date of termination of the outgoing manager, in writing by Lender in Lender's discretion and the applicable Rating Agencies (and Lender's approval may be conditioned upon Borrower delivering a Rating Comfort Letter as to such successor manager and Management Agreement). In no event shall the existing Management Agreement terminate before a new Management Agreement is effective and such successor manager is in management of the Property. Borrowers' failure to approve a successor manager in accordance with the Tenant in Common Agreement and to engage such successor manager within thirty (30) days after Borrowers elect to terminate any existing Management Agreement shall constitute an immediate Event of Default.

5.12.4 Consent and Subordination of Manager. If at any time Lender consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Lender's consent, execute a consent and subordination of management agreement substantially in the form of the Consent and Subordination of Manager of even date herewith executed and delivered by Manager to Lender.

5.13 Special Purpose Bankruptcy Remote Entity. Original Borrower shall at all times be a Special Purpose Bankruptcy Remote Entity. Original Borrower shall not directly or indirectly make any change, amendment or modification to its organizational documents, or otherwise take any action which could result in Original Borrower not being a Special Purpose Bankruptcy Remote Entity. A "**Special Purpose Bankruptcy Remote Entity**" shall have the meaning set forth on Schedule 4 hereto.

5.14 [Intentionally deleted].

5.15 Change In Business or Operation of Property. Borrowers shall not purchase or own any real property other than the Property and shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of their business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business or otherwise cease to operate the Property as a commercial business park, or terminate such business for any reason whatsoever (other than temporary cessation in connection with renovations to the Property).

5.16 **Debt Cancellation**. No Borrower shall cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to such Borrower by any Person, except for adequate consideration and in the ordinary course of such Borrower's business.

5.17 **Affiliate Transactions**. No Borrower shall enter into, or be a party to, any transaction with an Affiliate of any Borrower or any of the members of any Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to such Borrower or such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

5.18 **Zoning**. No Borrower shall initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.19 **No Joint Assessment**. No Borrower shall suffer, permit or initiate the joint assessment of the Property (i) with any other real property constituting a tax lot separate from the Property, and (ii) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.20 **Principal Place of Business**. No Borrower shall change its principal place of business or chief executive office without first giving Lender 30 days' prior notice.

5.21 **Change of Name, Identity or Structure**. No Borrower shall change its name, identity (including its trade name or names) or such Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in such Borrower's structure, without first obtaining the prior written consent of Lender. Each Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, each Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which such Borrower intends to operate the Property, and representing and warranting that such Borrower does business under no other trade name with respect to the Property.

5.22 **Indebtedness**. Borrowers shall not directly or indirectly create, incur or assume any indebtedness other than (i) the Debt and (ii) unsecured trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property, which in the case of such unsecured trade payables (A) are not evidenced by a note, (B) do not exceed, at any time, a maximum aggregate amount of 1% of the original amount of the Principal and (C) are paid within thirty (30) days of the date incurred (collectively, "***Permitted Indebtedness***").

5.23 **Licenses**. Except in connection with any Permitted Transfer, no Borrower shall Transfer any License required for the operation of the Property.

5.24 Compliance with Restrictive Covenants, Etc. No Borrower will enter into, modify, waive in any material respect or release any Easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing, without Lender's prior written consent, which consent may be granted or denied in Lender's sole discretion.

5.25 ERISA.

(i) No Borrower shall engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(ii) No Borrower shall maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of such Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan or any Welfare Plan or permit the assets of such Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

(iii) Each Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the Term, as requested by Lender in its sole discretion, that (A) such Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (B) such Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) the assets of such Borrower do not constitute "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101.

5.26 Transfers.

5.26.1 Generally. No Borrower shall directly or indirectly make, suffer or permit the occurrence of any Transfer other than a Permitted Transfer.

5.26.2 Permitted TIC Transfers.

(a) [Intentionally deleted].

(b) TIC Transfers. Subject to obtaining Lender's prior written consent and subject to the satisfaction of all of the conditions precedent set forth below, Original Borrower may, from time to time, transfer portions of its tenant-in-common interest in the Property to one or more entities (the "***TIC Borrowers***" collectively, and each a "***TIC Borrower***") that will assume, on a joint and several basis, Original Borrower's obligations under the Loan Documents (a "***TIC Transfer***"). Original Borrower may make a written application to Lender for Lender's consent to the subject TIC Transfer, subject to the conditions set forth below. Together with each such written application, Borrowers will pay to Lender a non-refundable processing fee of $1,500. Borrowers also shall pay on demand all of the reasonable out-of-pocket costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, in connection with any proposed TIC Transfer, whether or not the same occurs. Each TIC Transfer shall be subject to the satisfaction of the following conditions:

(i) No Event of Default has occurred and is continuing.

(ii) The identity and financial condition of each TIC Borrower and the owner(s) of the beneficial interests in such TIC Borrower (each, a "***TIC Owner***") shall be satisfactory to Lender in its sole and absolute discretion. In connection with the foregoing, with respect to any proposed TIC Borrower and TIC Owner, (i) Lender shall have received true and correct copies of credit reports, Lexis/Nexis background searches, and, with respect to TIC Borrowers and TIC Owners acquiring twenty percent (20%) or more of Original Borrower's interest, financial statements and federal income tax returns for the two years preceding the Permitted TIC Transfer in question; and any other information reasonably requested by Lender concerning the proposed TIC Borrower and/or its TIC Owner(s) and (ii) the subject TIC Owner shall (1) be solvent, (2) have never been convicted of a felony, (3) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (4) have no outstanding judgments against him/her which could have a material adverse effect on the applicable TIC Borrower to pay or perform any obligation under any Loan Document or to provide any security as required by the Loan Documents and (5) shall be an "Accredited Investor" as defined in Regulation D, as promulgated under the Securities Act of 1933. Lender's consent to a proposed Additional TIC Transfer shall be granted or denied in its sole and absolute discretion within ten (10) Business Days following receipt of the items described above.

(iii) Each TIC Borrower shall be a Special Purpose Bankruptcy Remote Entity in compliance with Schedule 4 hereof.

(iv) The TIC Owner(s) of each TIC Borrower shall execute and deliver to Lender a Guaranty of Recourse Obligations in the form attached hereto as Schedule 5 and Guarantors shall deliver or cause to be delivered to Lender reaffirmation of their obligations under the Guaranty of Recourse Obligations.

(v) The Property shall not at any time be owned by more than thirty-five (35) Borrowers; provided however for the purposes of determining the number of TIC Borrowers, Lender shall treat as a single TIC Borrower each of any ten (10) TIC Borrowers that consist of two entities each of which are separately wholly owned and controlled, directly or indirectly, by a husband and wife (i.e., one controlled by the husband and the other controlled by the wife), which entities take title in the Property by one deed, and (C) which entities enter into one assignment and assumption agreement as required herein.

(vi) [Intentionally deleted.]

(vii) Original Borrower shall at all times own not less than a one percent tenant-in-common interest in the Property.

(viii) The applicable TIC Borrower shall execute and deliver to Lender a Loan Assumption Agreement in the form attached hereto as Schedule 6, pursuant to which, among other things, such TIC Borrower shall assume all of Borrowers' liabilities and obligations under the Loan Documents so that each existing Borrower and each TIC Borrower shall be jointly and severally liable for all of the liabilities and obligations under the Loan Documents,

and upon the execution and delivery of such assignment and assumption agreement such TIC Borrower shall be a "Borrower" for all purposes under the Loan Documents.

(ix) Original Borrower shall have entered into each of the Property Agreements, the applicable TIC Borrower shall execute and deliver the Tenant in Common Agreement and an assumption of the other Property Agreements and the Fund Manager shall be designated by Borrowers as the sole notice party under this Agreement.

(x) The applicable TIC Borrower and each existing Borrower shall execute and deliver to Lender any other documents or deliverable required by Lender related to the Permitted TIC Transfer, including UCC-1 financing statements, copies of organizational documents for the proposed TIC Borrower and its members and title insurance endorsements, in form and substance acceptable to Lender in Lender's sole discretion (together with the documents required pursuant to clauses (iv), (viii) and (ix) above, the "***TIC Transfer Documents***").

(xi) Each TIC Borrower shall deliver to Lender an opinion of counsel in form and substance satisfactory to Lender, to the effect that each TIC Borrower is duly formed, validly existing, and in good standing, that the TIC Transfer Documents have been duly authorized, executed and delivered, that the TIC Transfer Documents and the Loan Documents are enforceable in accordance with their terms, and such other matters as Lender may request.

(xii) Each TIC Borrower shall deliver to Lender evidence of compliance with insurance requirements and such other closing requirements customarily imposed by Lender.

(xiii) With respect to any Permitted TIC Transfer, (i) after giving effect to such Permitted TIC Transfer, Key Principals shall continue to Control (as defined in clause (ii) of the defined term "Control" in Section 1.1) the day-to-day management and operations of the Property, and (ii) no such Permitted TIC Transfer shall result in a change of the day-to-day management and operations of the Property.

(c) Substitution of TIC Borrowers. Subject to obtaining Lender's prior written consent, and subject to the satisfaction of all of the conditions precedent set forth below, any TIC Borrower may transfer its tenant-in-common interest in the Property to another entity (the "***Substitute TIC Borrower***") that will assume, on a joint and several basis, Borrowers' obligations under the Loan Documents (a "***TIC Transfer and Assumption***"). Borrowers may make a written application to Lender for Lender's consent to a TIC Transfer and Assumption, subject to the conditions set forth below. Together with each such written application, Borrowers will pay to Lender a non-refundable $1,500 processing fee. Borrowers also shall pay on demand all of the reasonable out-of-pocket costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, in connection with any proposed TIC Transfer and Assumption, whether or not the same occurs. Lender's consent to a TIC Transfer and Assumption, which shall be granted or denied within ten (10) Business Days following receipt of the items described in clause (2) of subsection (b) above, shall be subject to the satisfaction of the following conditions:

(i) [Intentionally deleted.]

(ii) The conditions set forth in subsection (b) above shall have been satisfied;

(iii) With respect to any TIC Transfer and Assumption after the first ten (10) TIC Transfer and Assumptions, Borrowers shall deliver to Lender an assumption fee in the amount of 1.00% of the Substitute TIC Borrower's pro-rata share of the then unpaid Principal (i.e., an amount equal to 1.00% of the product of (1) the then unpaid Principal and (2) the applicable Substitute TIC Borrower's undivided tenant in common interest (after giving effect to the subject TIC Transfer and Assumption) in the Property (expressed as a percentage));

5.26.3 Transfer and Assumption.

(a) Subject to obtaining Lender's prior written consent, which may be withheld in Lender's reasonable discretion, and subject to the terms and satisfaction of all of the conditions precedent set forth in this Section 5.26.3, Borrowers shall have the right to Transfer the Property to one or more parties (the "***Transferee Borrower***") and have the Transferee Borrower assume all of Borrowers' obligations under the Loan Documents, and have replacement guarantors and indemnitors assume all of the obligations of the indemnitors and guarantors of the Loan Documents (collectively, a "***Transfer and Assumption***"). Borrowers may make a written application to Lender for Lender's consent to the Transfer and Assumption, subject to the conditions set forth in paragraphs (b) and (c) of this Section 5.26.3. Together with such written application, Borrowers will pay to Lender the reasonable review fee then required by Lender. Borrowers also shall pay on demand all of the reasonable costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, and including the fees and expenses of Rating Agencies and other outside entities, in connection with considering any proposed Transfer and Assumption, whether or not the same is permitted or occurs.

(b) Lender's consent, which may be withheld in Lender's sole and absolute discretion, to a Transfer and Assumption shall be subject to the following conditions:

(i) No Default or Event of Default has occurred and is continuing;

(ii) Borrowers have submitted to Lender true, correct and complete copies of any and all information and documents of any kind requested by Lender concerning the Property, Transferee Borrower, replacement guarantors and indemnitors and Borrowers;

(iii) Evidence satisfactory to Lender has been provided showing that the Transferee Borrower and such of its Affiliates as shall be designated by Lender comply and will comply with Section 5.13 hereof, as those provisions may be modified by Lender taking into account the ownership structure of Transferee Borrower and its Affiliates;

(iv) [Intentionally deleted.];

(v) If the Loan has not been the subject of a Secondary Market Transaction, then Lender shall have determined in its reasonable discretion (taking into consideration such factors as Lender may determine, including the attributes of the loan pool in

which the Loan might reasonably be expected to be securitized) that no rating for any securities that would be issued in connection with such securitization will be diminished, qualified, or withheld by reason of the Transfer and Assumption;

(vi) Borrowers shall have paid all of Lender's reasonable costs and expenses in connection with considering the Transfer and Assumption, and shall have paid the amount requested by Lender as a deposit against Lender's costs and expenses in connection with effecting the Transfer and Assumption;

(vii) Borrowers, the Transferee Borrower, and the replacement guarantors and indemnitors shall have indicated in writing in form and substance reasonably satisfactory to Lender their readiness and ability to satisfy the conditions set forth in subsection (c) below;

(viii) The identity, experience, financial condition and creditworthiness of the Transferee Borrower and the replacement guarantors and indemnitors shall be satisfactory to Lender; and

(ix) The proposed property manager and proposed Management Agreement shall be satisfactory to Lender and the applicable Rating Agencies.

(c) If Lender consents to the Transfer and Assumption, the Transferee Borrower and/or Borrower as the case may be, shall immediately deliver the following to Lender:

(i) Borrowers shall deliver to Lender an assumption fee in the amount of 1.00 percent of the then unpaid Principal;

(ii) Borrowers, Transferee Borrower and the original and replacement guarantors and indemnitors shall execute and deliver to Lender any and all documents effecting the Transfer and Assumption required by Lender, in form and substance required by Lender, in Lender's sole discretion;

(iii) Counsel to the Transferee Borrower and replacement guarantors and indemnitors shall deliver to Lender opinions in form and substance satisfactory to Lender as to such matters as Lender shall require, which shall address substantially the same matters as were required in connection with the origination of the Loan;

(iv) Borrowers shall cause to be delivered to Lender, an endorsement (relating to the change in the identity of the vestee and execution and delivery of the Transfer and Assumption documents) to the Title Insurance Policies in form and substance acceptable to Lender, in Lender's reasonable discretion (the "***Endorsement***"); and

(v) Borrowers shall deliver to Lender a payment in the amount of all remaining unpaid out-of-pocket costs incurred by Lender in connection with the Transfer and Assumption, including but not limited to, Lender's reasonable attorneys fees and expenses, all recording fees, and all fees payable to the title company for the delivery to Lender of the Endorsement.

(vi) If an Approved Mezzanine Loan is outstanding at the time of the Transfer and Assumption, the proposed Transfer and Assumption shall not constitute or cause a default under the Mezzanine Loan Documents.

(d) Upon the closing of a Transfer and Assumption, Lender shall release the then-existing Borrowers and Guarantors from all obligations under the Loan Documents (except as to Borrowers' Recourse Liabilities and Guarantor's liability therefor), only if expressly assumed by the Transferee Borrower or replacement guarantor, as the case may be, in connection with the Transfer and Assumption).

(e) The rights of Borrowers under this Section 5.26.3 are in addition to and in no way shall limit or be limited by the occurrence of one or more Permitted TIC Transfers permitted pursuant to Section 5.26.2 above.

5.27 **Liens**. Without Lender's prior written consent, no Borrower shall create, incur, assume, permit or suffer to exist any Lien on all or any portion of the Property or any direct or indirect legal or beneficial ownership interest in any Borrower, except Liens in favor of Lender and Permitted Encumbrances, unless such Lien is bonded or discharged within 30 days after any Borrower first receives notice of such Lien.

5.28 **Dissolution**. No Borrower shall (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Property or (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of such Borrower except to the extent expressly permitted by the Loan Documents.

5.29 **Expenses**. Borrowers shall reimburse Lender upon receipt of notice for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with the Loan, including (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrowers; (ii) Borrowers' and Lender's ongoing performance under and compliance with the Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Lender's Liens in the Property and the Cash Accounts (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Lender's Consultant, surveys and engineering reports); (vii) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting one or more Borrowers, the Loan Documents, the Property, or any other security given for the Loan; (viii) fees charged by Rating Agencies in connection with the Loan (other than the initial rating) or any modification thereof and (ix) enforcing any obligations of or collecting any payments due from Borrowers under any Loan Document or with respect to the Property or in

connection with any refinancing or restructuring of the Loan in the nature of a "work-out", or any insolvency or bankruptcy proceedings. The obligations and liabilities of Borrowers under this Section 5.29 shall survive the Term and the exercise by Lender of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

5.30 Indemnity. Borrowers shall defend, indemnify and hold harmless Lender and each of its Affiliates and their respective successors and assigns, including the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing (including any Servicer) and each other Person, if any, who Controls Lender, its Affiliates or any of the foregoing (each, an "***Indemnified Party***"), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the "***Indemnified Liabilities***") in any manner, relating to or arising out of or by reason of the Loan, including: (i) any breach by any Borrower of its obligations under, or any misrepresentation by any Borrower contained in, any Loan Document; (ii) the use or intended use of the proceeds of the Loan; (iii) any information provided by or on behalf of any Borrower, or contained in any documentation approved by any Borrower; (iv) ownership of the Mortgage, the Property or any interest therein, or receipt of any Rents; (v) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vi) any use, nonuse or condition in, on or about the Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property; (viii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from or affecting the Property; (ix) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (x) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (xi) any violation of the Environmental Laws which is based upon or in any way related to such Hazardous Substance, including the costs and expenses of any Remedial Work; (xii) any failure of the Property to comply with any Legal Requirement; (xiii) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof, or any liability asserted against Lender with respect thereto; and (xiv) the claims of any lessee of any portion of the Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; provided, however, that Borrowers shall not have any obligation to any Indemnified Party hereunder to the extent that it is finally judicially determined that such Indemnified Liabilities arise from the gross negligence, fraud or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this paragraph shall be payable on demand and shall bear interest at the Default Rate from the date loss or damage is sustained by any Indemnified Party until paid. The obligations and liabilities of Borrowers under this Section 5.30 shall survive the Term and the exercise by Lender of any of its rights or

remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

5.31 Tenant in Common Agreement and Other Property Agreements.

(a) Each Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions set forth in the Tenant in Common Agreement on the part of each such Borrower to be performed thereunder, and (ii) promptly deliver to Lender any material notice, any notice of default given or received by any Borrower under the Tenant in Common Agreement and any other notice reasonably requested by Lender.

(b) No Borrower shall, without the prior consent of Lender, terminate or cancel the Tenant in Common Agreement or modify, change, supplement, alter or amend the Tenant in Common Agreement in any manner whatsoever (other than to reflect an assumption of the Tenant in Common Agreement by a TIC Borrower in accordance with Section 5.26.2(b) or 5.26.2(c)), and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Tenant in Common Agreement without the prior consent of Lender shall be void and of no force and effect.

(c) Each Borrower hereby assigns to Lender, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of the Loan Documents all of the rights, privileges and prerogatives of the applicable Borrower under the Property Agreements to which such Borrower is or becomes a party, including any rights of first refusal (including any such rights arising under Section 363(i) of Chapter 11 of the United States Bankruptcy Code), purchase options or other similar rights under the Tenant in Common Agreement. Each Borrower hereby agrees that any rights of first refusal, purchase options or other similar rights under the Tenant in Common Agreement afforded to any Borrower are hereby made expressly subordinate to the Mortgage and the other Loan Documents.

(d) Each Borrower hereby agrees that all rights and remedies of each such Borrower, including rights of indemnification, under the Tenant in Common Agreement are hereby expressly made subject and subordinate to the terms and conditions of the Loan Documents and, so long as the Loan is outstanding, no Borrower shall, without the Lender's consent, exercise any such rights and remedies, including any rights of indemnification, against any other tenant-in-common under the Tenant in Common Agreement.

(e) Each Borrower hereby waives any rights it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any portion of the Debt is outstanding, to create or suffer to exist any Lien on all or any portion of any other tenant-in-common interest held by any other Borrower pursuant to the terms of the Tenant in Common Agreement and, so long as the Loan is outstanding, no Borrower shall place a Lien on all or any portion of any other tenant-in-common interest held by any other Borrower pursuant to the terms of the Tenant in Common Agreement.

(f) Each Borrower hereby waives any right that it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any

portion of the Debt is outstanding, to make any application to or petition any court for a partition of the Property, and, so long any portion of the Debt is outstanding, no Borrower shall make any application to or petition any court for a partition of the Property.

(g) Each tenant in common shall, at the reasonable request of Lender or any Rating Agency, modify the Tenancy In Common Agreement in connection with the securitization of the Loan.

(h) Each tenant in common hereby waives any right that it may have (whether by operation of law or pursuant to the terms of the Tenant in Common Agreement), so long as any portion of the indebtedness evidenced by the Note is outstanding, to make any application to or petition any court for a partition of the Property, and, so long any portion of the indebtedness evidenced by the Note is outstanding, it shall not make any application to or petition any court for a partition of the Property.

(i) To the extent there are any inconsistencies between the terms of the Loan Documents and the terms of the Tenancy In Common Agreement, the terms of the Loan Documents shall prevail.

(j) During the term of the Loan, each tenant in common agrees that Lender shall be deemed a third-party Lender of those provisions of the Tenancy In Common Agreement that benefit Lender.

(k) Each Borrower shall copy Lender on all material notices relating to the Tenancy In Common Agreement.

5.32 Covenants, Representations and Warranties Regarding Ownership Structure.

(a) Original Borrower shall retain not less than a one percent (1%) tenant in common interest in the Property.

(b) The Original Borrower is and shall remain a Delaware limited liability company which is and shall remain a Single Purpose Bankruptcy Remote Entity.

(c) Fund Manager is and shall remain the sole manager of Original Borrower, and is and shall remain Controlled, directly or indirectly, by U.S. Advisors.

(d) Original Borrower may, without notice or consent of the Lender, at any time admit additional members to Original Borrower through the sale of "unit interests" so long as the requirements herein remain satisfied; including, without limitation, the requirements of subsection (iv) in the definition of "***Permitted Transfers***."

(e) Without limiting the foregoing, Key Principals hold and (except in the event that an Approved Mezzanine Lender acquires the ownership interests of the Mezzanine Borrower in the Borrowers) shall hold direct or indirect Control (as defined in clause (ii) of the defined term "***Control***" in Section 1.1) of Original Borrower, and Manager or any other manager of any such entity with respect to voting rights on all matters relating to the Loan, the Loan

Documents and/or restructurings or amendments or modifications thereof (including in connection with a work-out relating thereto).

5.33 **Patriot Act Compliance**. Borrowers will use their good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrowers' compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Property, including those relating to money laundering and terrorism. In the event that any Borrower fails to comply with the Patriot Act or any such requirements of governmental authorities, then Lender may, at its option, cause such Borrower to comply therewith and any and all reasonable costs and expenses incurred by Lender in connection therewith shall be secured by the Mortgages and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "***Patriot Act***" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(a) Neither any Borrower nor any partner in any Borrower or member of such partner nor any owner of a direct or indirect interest in any Borrower (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is, to Borrowers' knowledge, currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "***Patriot Act Offense***" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "***Patriot Act Offense***" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "***Government Lists***" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("***OFAC***"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrowers in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in "Governmental Lists."

6. NOTICES AND REPORTING

6.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (a "*Notice*") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Lender:

Greenwich Capital Financial Products, Inc.
600 Steamboat Road
Greenwich, Connecticut 06830
Attention: Mortgage Loan Department
Telecopier (203) 618-2052

with a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
515 S. Figueroa Street, 7th Floor
Los Angeles, California 90071
Attention: Gregg J. Loubier
Telecopier: (213) 620-8816

If to Borrower:

Fontaine Business Park, LLC
5 Financial Plaza, Suite 205
Napa, California 94558
Attention: Michael Schwartz and Stephen Corea
Telecopier: (707) 929-1600

With a copy to:

Powell Goldstein LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Attn: Michael Rafter and William H. Mathieu
Telecopier: 404-572-6999

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

6.2 Borrower Notices and Deliveries. Each Borrower shall (a) give prompt written notice to Lender of: (i) any litigation, governmental proceedings or claims or investigations pending or threatened against any such Borrower which might materially adversely affect such Borrower's condition (financial or otherwise) or business or the Property; (ii) any material adverse change in such Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which such Borrower has knowledge; and (b) furnish and provide to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested, from time to time, by Lender. In addition, after request by Lender (but no more frequently than twice in any year), within 45 days after tenant estoppel certificates addressed to Lender, its successors and assigns from each tenant at the Property in form and substance reasonably satisfactory to Lender.

6.3 Financial Reporting.

6.3.1 Bookkeeping. Original Borrower shall keep on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Original Borrower and all items of income and expense and any services, Equipment or furnishings provided in connection with the operation of the Property. Lender shall have the right from time to time during normal business hours upon reasonable notice to examine such books, records and accounts relating to the Property at the office of Manager or other Person maintaining them, and to make such copies or extracts thereof as Lender shall desire. After an Event of Default, Borrowers shall pay any costs incurred by Lender to examine such books, records and accounts, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

6.3.2 Annual Reports. Original Borrower (on behalf of Borrowers) shall furnish to Lender annually, within 120 days after each calendar year, a complete copy of Original Borrower's and the Property's annual financial statements reasonably acceptable to Lender, each in accordance with GAAP and containing balance sheets and statements of profit and loss for such Borrower and the Property in such detail as Lender may request. Each such statement (x) shall be in form and substance reasonably satisfactory to Lender, (y) shall set forth the financial condition and the income and expenses for the Property for the immediately preceding calendar year, including statements of annual Net Operating Income as well as (1) a list of tenants, if any, occupying more than twenty percent of the rentable space of the Property, (2) a breakdown showing (a) the year in which each Lease then in effect expires, (b) the percentage of rentable space covered by such Lease, (c) the percentage of base rent with respect to which Leases shall expire in each such year, expressed both on a per year and a cumulative basis and (z) shall be accompanied by an Officer's Certificate from Original Borrower certifying (1) that such statement is true, correct, complete and accurate and presents fairly the financial condition of the Property and has been prepared in accordance with GAAP and (2) whether there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it. Upon written request from Lender, each TIC Borrower having acquired twenty percent (20%) or more of Original Borrower's interest shall furnish to Lender annually, within 120 days after each calendar year, a complete copy of such TIC Borrower's annual tax return and financial statements. Each such statement shall be in form and substance reasonably satisfactory to Lender and shall be accompanied by an Officer's

Certificate from such TIC Borrower certifying that such statement is true, correct, complete and accurate and presents fairly the net worth and liquidity of such TIC Borrower.

6.3.3 Monthly/Quarterly Reports. Original Borrower (on behalf of Borrowers) shall furnish the following items to Lender within 15 days after the end of (x) each calendar month at any time prior to a Secondary Market Transaction or (y) each calendar quarter thereafter: (i) monthly and year-to-date operating statements, noting Net Operating Income and other information necessary and sufficient under GAAP to fairly represent the financial position and results of operation of the Property during such calendar month, all in form reasonably satisfactory to Lender; (ii) a balance sheet for such calendar month; (iii) a comparison of the budgeted income and expenses and the actual income and expenses for each month and year-to-date for the Property, together with a detailed explanation of any variances of 10% or more between budgeted and actual amounts for such period and year-to-date; (iv) a statement of the actual Capital Expenses made by Borrowers during each calendar quarter as of the last day of such calendar quarter; (v) a statement that Borrowers have not incurred any indebtedness other than indebtedness permitted hereunder; (vi) an aged receivables report and (vii) rent rolls identifying the leased premises, names of all tenants, units leased, monthly rental and all other charges payable under each Lease, date to which paid, term of Lease, date of occupancy, date of expiration, material special provisions, concessions or inducements granted to tenants, and a year-by-year schedule showing by percentage the rentable area of the Improvements and the total base rent attributable to Leases expiring each year) and a delinquency report for the Property. Each such statement shall be accompanied by an Officer's Certificate from Original Borrower (1) that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrowers and the Property in accordance with GAAP (subject to normal year-end adjustments) and (2) whether there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

6.3.4 Other Reports. Subject to the provisions of Section 6.3.2, Original Borrower (on behalf of Borrowers) shall furnish to Lender, within ten Business Days after request, such further detailed and reasonable information with respect to the operation of the Property and the financial affairs of Borrowers or Manager as may be reasonably requested by Lender or any applicable Rating Agency. Upon written request by Lender, each TIC Borrower shall furnish to Lender a statement of such TIC Borrower's net worth and liquidity in such detail as Lender may reasonably request.

6.3.5 Annual Budget. Original Borrower (on behalf of Borrowers) shall prepare and submit (or shall cause Manager to prepare and submit) to Lender (a) on the date hereof, and (b) by November 30th of each year thereafter during the Term, for approval by Lender, which approval shall not be unreasonably withheld or delayed, a proposed pro forma budget for the Property for the succeeding calendar year (the "***Annual Budget***", and each Annual Budget approved by Lender is referred to herein as the "***Approved Annual Budget***")), and, promptly after preparation thereof, any revisions to such Annual Budget. The initial Annual Budget is attached hereto as Schedule 8. The Annual Budget shall consist of (i) an operating expense budget showing, on a month-by-month basis, in reasonable detail, each line item of Borrowers' anticipated operating income and operating expenses (on a cash and accrual basis), including amounts required to establish, maintain and/or increase any monthly payments

required hereunder (and once such Annual Budget has been approved by Lender, such operating expense budget shall be referred to herein as the "*Approved Operating Budget*"), and (ii) a Capital Expense budget showing, on a month-by-month basis, in reasonable detail, each line item of anticipated Capital Expenses (and once such Annual Budget has been approved by Lender, such Capital Expense budget shall be referred to herein as the "*Approved Capital Budget*"). Until such time that any Annual Budget has been approved by Lender, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably determined by Lender (including increases for any non-discretionary expenses)).

6.3.6 Breach. If any Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information (the "*Required Records*") required by this Section 6.3 within 30 days after the date upon which such Required Record is due, and provided Lender has given such Borrower at least 15 days prior notice of such failure, then after such Borrower's failure to deliver any Required Records, Lender shall have the option, upon 15 additional days notice to such Borrower to gain access to such Borrower's books and records and prepare or have prepared at such Borrower's expense, any Required Records not delivered by such Borrower.

7. INSURANCE; CASUALTY; AND CONDEMNATION

7.1 Insurance.

7.1.1 Coverage. Borrowers, at their sole cost, for the mutual benefit of each Borrower and Lender, shall obtain and maintain during the Term the following policies of insurance:

(a) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, vandalism, and malicious mischief, boiler and machinery and, subject to subsection (j) below, coverage for damage or destruction caused by the acts of "Terrorists" (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure for ordinance of law coverage, costs of demolition and increased cost of construction in amounts satisfactory to Lender. Each such insurance policy shall (i) be in an amount equal to 100% of the then replacement cost of the Improvements without deduction for physical depreciation, , and (ii) have deductibles no greater than the lesser of $10,000 or five percent (5%) of Net Operating Income per occurrence, (iii) be paid annually in advance and (iv) be on a replacement cost basis with no co-insurance or, if there shall be co-insurance, must contain an agreed amount endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Borrower is required to insure on a replacement cost basis. Lender shall be named mortgagee and Loss Payee on a Standard Mortgagee Endorsement.

(b) Flood insurance if any part of the Property is located in an area now or hereafter designated by the Federal Emergency Management Agency as a Zone "A" & "V" Special Hazard Area, or such other Special Hazard Area if Lender so requires in its sole

discretion. Such policy shall (i) be in an amount equal to (A) 100% of the full replacement cost of the Improvements on the Property (without any deduction for depreciation) or (B) such other amount as agreed to by Lender and (ii) have a maximum permissible deductible of $5,000.

(c) Public liability insurance, including (i) "Commercial General Liability Insurance" with no exclusion for terrorism, (ii) "Owned", "Hired" and "Non Owned Auto Liability"; and (iii) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing no less than minimum limits per occurrence of $1,000,000 and $2,000,000 in the aggregate for any policy year with a deductible or self insured retention of no more than $10,000; together with at least $10,000,000 excess and/or umbrella liability insurance for any and all claims. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Borrower's obligation to indemnify Lender as required under this Agreement and the other Loan Documents), "Products" and "Completed Operations Liability" coverage.

(d) Rental loss and/or business interruption insurance (i) with Lender being named as "Lender Loss Payee", (ii) in an amount equal to one hundred percent (100%) of the projected Rents from the Property for a period of at least 12 months, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the Term as and when the estimated or actual Rents increase.

(e) Comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to the lease on a replacement cost basis and in an amount equal to the greater of (i) $2,000,000 and (ii) 100% of the full replacement cost of the Improvements on such Property (without any deduction for depreciation).

(f) Worker's compensation and disability insurance with respect to any employees of Borrower, as required by any Legal Requirement.

(g) During any period of repair or restoration, builder's "all-risk" insurance on the so called completed value basis in an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender.

(h) Coverage to compensate for ordinance of law, including the value of the undamaged portion of the building, the cost of demolition and the increased cost of construction in an amount satisfactory to Lender.

(i) Such other insurance (including environmental liability insurance, earthquake insurance, mine subsidence insurance and windstorm insurance) as may from time to time be reasonably required by Lender in order to protect its interests.

(j) Notwithstanding anything in subsection (a) above to the contrary, Borrowers shall be required to obtain and maintain coverage in their property insurance Policy

(or by a separate Policy) against loss or damage by terrorist acts in an amount equal to 100% of the "Full Replacement Cost" of the Property; provided that such coverage is available. In the event that such coverage with respect to terrorist acts is not included as part of the "all risk" property policy required by subsection (a) above, Borrowers shall, nevertheless be required to obtain coverage for terrorism (as stand alone coverage) in an amount equal to 100% of the "Full Replacement Cost" of the Property plus the rental loss and/or business interruption coverage under clause (d) above; provided that such coverage is available. Borrowers shall obtain the coverage required under this subsection (j) from a carrier which otherwise satisfies the rating criteria specified in Section 7.1.2 (a "***Qualified Carrier***") or in the event that such coverage is not available from a Qualified Carrier, Borrower shall obtain such coverage from the highest rated insurance company providing such coverage.

7.1.2 Policies. All policies of insurance (the "***Policies***") required pursuant to Section 7.1.1 shall (i) be issued by companies approved by Lender and licensed to do business in the State, with a claims paying ability rating of "A" or better by S&P (and the equivalent by any other Rating Agency) or a rating of A:VII or better in the current Best's Insurance Reports; (ii) name Lender and its successors and/or assigns as their interest may appear as the mortgagee (in the case of property insurance), loss payee (in the case of business interruption/loss of rents coverage) and an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance), 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) contain a waiver of subrogation against Lender; (v) be assigned and the carrier-certified copies thereof delivered to Lender; (vi) contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither any Borrower, Lender nor any other party shall be a co-insurer under the Policies, (B) that Lender shall receive at least 30 days' prior written notice of any modification, reduction or cancellation of any of the Policies, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Lender, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums; (vii) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Loan Documents; and (viii) be satisfactory in form and substance to Lender and approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrowers shall pay the premiums for such Policies (the "***Insurance Premiums***") as the same become due and payable and furnish to Lender evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Lender pursuant to Section 3.3) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Lender. If Borrowers do not furnish such evidence and receipts at least 30 days prior to the expiration of any expiring Policy, then Lender may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Borrowers

shall reimburse Lender for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Borrowers shall deliver to Lender a certified copy of each Policy within 30 days after its effective date. Within 30 days after request by Lender, Borrowers 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, and the like.

7.2 Casualty.

7.2.1 Notice; Restoration. If the Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "*Casualty*"), Borrowers shall give prompt notice thereof to Lender. Following the occurrence of a Casualty, Borrowers, regardless of whether insurance proceeds are available, but provided Lender makes all insurance proceeds available for such purpose, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to be of at least equal value and of substantially the same character as prior to such damage or destruction.

7.2.2 Settlement of Proceeds. If a Casualty covered by any of the Policies (an "*Insured Casualty*") occurs where the loss does not exceed $250,000, provided no Event of Default has occurred and is continuing, Borrowers may settle and adjust any claim without the prior consent of Lender; provided such adjustment is carried out in a competent and timely manner, and Borrowers are hereby authorized to collect and receipt for the insurance proceeds (the "*Proceeds*"). In the event of an Insured Casualty where the loss equals or exceeds $250,000 (a "*Significant Casualty*"), Lender may, in consultation with the Borrower (although Borrower's consent shall not be required) and in its reasonable discretion, settle and adjust any claim with the insurer(s) on the amount to be paid on the loss, and the Proceeds shall be due and payable solely to Lender and held by Lender in the Casualty/Condemnation Account and disbursed in accordance herewith. If any Borrower or any party other than Lender is a payee on any check representing Proceeds with respect to a Significant Casualty, such Borrower shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Lender. Each Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse such check payable to the order of Lender. The reasonable expenses incurred by Lender in the settlement, adjustment and collection of the Proceeds shall become part of the Debt and shall be reimbursed by Borrowers to Lender upon demand. Notwithstanding anything to the contrary contained herein, if in connection with a Casualty any insurance carrier makes a payment under the Property insurance Policy that Borrowers propose be treated as business or rental interruption insurance, then, notwithstanding any designation (or lack of designation) by the insurance carrier as to the purpose of such payment, as between Lender and Borrowers, such payment shall not be treated as business or rental interruption insurance proceeds unless Borrowers have demonstrated to Lender's satisfaction that the remaining net Proceeds that will be received from the property insurance carriers and/or additional equity funds, as applicable, are available and are sufficient to pay 100% of the cost of fully restoring the Improvements or, if such net Proceeds are to be applied to repay the Debt in accordance with the terms hereof, that such remaining net Proceeds will be sufficient to pay the Debt in full.

7.3 Condemnation.

7.3.1 Notice; Restoration. Borrowers shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property (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, Borrowers, regardless of whether an Award is available, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to the extent practicable to be of at least equal value and of substantially the same character (and to have the same utility) as prior to such Condemnation.

7.3.2 Collection of Award. Lender is hereby irrevocably appointed as Borrowers' attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment in respect of a Condemnation (an "*Award*") and to make any compromise, adjustment or settlement in connection with such Condemnation. Notwithstanding any Condemnation (or any transfer made in lieu of or in anticipation of such Condemnation), Borrowers shall continue to pay the Debt at the time and in the manner provided for in the 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. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of the Award sufficient to pay the Debt. Borrowers shall cause any Award that is payable to Borrower to be paid directly to Lender. Lender shall hold such Award in the Casualty/Condemnation Account and disburse such Award in accordance with the terms hereof.

7.4 Application of Proceeds or Award.

7.4.1 Application to Restoration. If an Insured Casualty or Condemnation occurs where (i) the loss is in an aggregate amount less than the 30% of the unpaid Principal, (ii) in the reasonable judgment of Lender, the Property can be restored within six months, and prior to six months before the Stated Maturity Date and prior to the expiration of the rental or business interruption insurance with respect thereto, to the Property's pre-existing condition and utility as existed immediately prior to such Insured Casualty or Condemnation and to an economic unit not less valuable and not less useful than the same was immediately prior to the Insured Casualty or Condemnation, and after such restoration will adequately secure the Debt and (iii) no Default or Event of Default shall have occurred and be then continuing, then the Proceeds or the Award, as the case may be (after reimbursement of any expenses incurred by Lender), shall be applied to reimburse Borrowers for the cost of restoring, repairing, replacing or rebuilding the Property (the "*Restoration*"), in the manner set forth herein. Borrowers shall commence and diligently prosecute such Restoration. Notwithstanding the foregoing, in no event shall Lender be obligated to apply the Proceeds or Award to reimburse any Borrower for the cost of Restoration unless, in addition to satisfaction of the foregoing conditions, both (x) Borrowers shall pay (and if required by Lender, Borrowers shall deposit with Lender in advance) all costs of such Restoration in excess of the net amount of the Proceeds or the Award

made available pursuant to the terms hereof; and (y) Lender shall have received evidence reasonably satisfactory to it that during the period of the Restoration, the Rents will be at least equal to the sum of the operating expenses and Debt Service and other reserve payments required hereunder, as reasonably determined by Lender.

7.4.2 Application to Debt. Except as provided in Section 7.4.1, any Proceeds and/or Award may, at the option of Lender in its discretion, be applied to the payment of (i) accrued but unpaid interest on the Note, (ii) the unpaid Principal and (iii) other charges due under the Note and/or any of the other Loan Documents, or applied to reimburse Borrowers for the cost of any Restoration, in the manner set forth in Section 7.4.3. Any such prepayment of the Loan shall be without any Yield Maintenance Premium, unless an Event of Default has occurred and is continuing at the time the Proceeds are received from the insurance company or the Award is received from the condemning authority, as the case may be, in which event Borrowers shall pay to Lender an additional amount equal to the Yield Maintenance Premium, if any, that may be required with respect to the amount of the Proceeds or Award applied to the unpaid Principal.

7.4.3 Procedure for Application to Restoration. If any Borrower is entitled to reimbursement out of the Proceeds or an Award held by Lender, such Proceeds or Award shall be disbursed from time to time from the Casualty/Condemnation Account, which such funds were deposited in the Casualty/Condemnation Account pursuant to Section 3.8, upon Lender being furnished with (i) evidence satisfactory to Lender of the estimated cost of completion of the Restoration, (ii) a fixed price or guaranteed maximum cost construction contract for Restoration satisfactory to Lender, (iii) prior to the commencement of Restoration, all immediately available funds in addition to the Proceeds or Award that in Lender's judgment are required to complete the proposed Restoration, (iv) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey, permits, approvals, licenses and such other documents and items as Lender may reasonably require and approve in Lender's discretion, and (v) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work. Lender may, at Borrowers' expense, retain a consultant to review and approve all requests for disbursements, which approval shall also be a condition precedent to any disbursement. No payment made prior to the final completion of the Restoration shall exceed 90% of the value of the work performed from time to time; funds other than the Proceeds or Award shall be disbursed prior to disbursement of such Proceeds or Award; and at all times, the undisbursed balance of such Proceeds or Award 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 Borrowers for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Provided no Default or Event of Default then exists, any surplus that remains out of the Proceeds held by Lender after payment of such costs of Restoration shall be paid to Borrowers. Any surplus that remains out of the Award received by Lender after payment of such costs of Restoration shall, be returned to Borrowers.

8. DEFAULTS

8.1 Events of Default. An "Event of Default" shall exist with respect to the Loan if any of the following shall occur:

(a) any portion of the Debt is not paid when due;

(b) any of the Taxes are not paid when due and remains unpaid after five days notice to Borrower from Lender (unless Lender is paying such Taxes pursuant to Section 3.3), subject to Borrowers' right to contest Taxes in accordance with Section 5.2;

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

(d) a Transfer other than a Permitted Transfer occurs;

(e) any representation or warranty made by any Borrower or Guarantor or in any Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by any Borrower or Guarantor in connection with any Loan Document, shall be false or misleading in any material respect as of the date the representation or warranty was made;

(f) any Borrower or Guarantor shall make an assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(g) a receiver, liquidator or trustee shall be appointed for any Borrower or Guarantor; or any Borrower or Guarantor shall be adjudicated a bankrupt or insolvent; or 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, any Borrower or Guarantor, as the case may be; or any proceeding for the dissolution or liquidation of any Borrower or Guarantor shall be instituted or any proceeding to partition the Property; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Borrower or Guarantor, as the case may be, only upon the same not being discharged, stayed or dismissed within 60 days;

(h) any Borrower breaches any covenant contained in Sections 5.12.1 (a) - (f), 5.13, 5.15, 5.22, 5.25, 5.28 or 5.31;

(i) except as expressly permitted hereunder, the actual or threatened alteration, improvement, demolition or removal of all or any of portion of the Improvements without the prior written consent of Lender;

(j) an Event of Default as defined or described elsewhere in this Agreement or in any other Loan Document occurs; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or to permit Lender to accelerate the maturity of any portion of the Debt;

(k) a default occurs under any term, covenant or provision set forth herein or in any other Loan Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired;

(l) [Intentionally deleted].

(m) if Key Principals fail to Control (as defined in clause (ii) of the defined term "Control" in Section 1.1) the Manager and the day-to-day management and operations of the Property (unless the Manager is replaced with a successor manager in accordance with and subject to satisfaction of the terms and conditions set forth in Section 5.12.2 or Section 5.12.3);

(n) a default shall be continuing under any of the other terms, covenants or conditions of this Agreement or any other Loan Document not otherwise specified in this Section 8.1, for ten days after notice to Borrowers (and Guarantor, if applicable) from Lender, in the case of any default which can be cured by the payment of a sum of money, or for 30 days after notice from Lender in the case of any other default; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, and Borrowers (or Guarantor, if applicable) shall have commenced to cure such default within such 30-day period and thereafter diligently and expeditiously proceeds to cure the same, such 30-day period shall be extended for an additional period of time as is reasonably necessary for Borrowers (or Guarantor, if applicable) in the exercise of due diligence to cure such default, such additional period not to exceed 60 days.

8.2 Remedies.

8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (f) or (g) of Section 8.1) and at any time and from time to time thereafter, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against any or all Borrowers and in and to the Property; including declaring the Debt to be immediately due and payable (including unpaid interest), Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers), without notice or demand; and upon any Event of Default described in paragraph (f) or (g) of Section 8.1, the Debt (including unpaid interest, Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers) shall immediately and automatically become due and payable, without notice or demand, and each Borrower hereby expressly waives any such notice or demand, anything contained in any Loan Document to the contrary notwithstanding.

8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrowers under the Loan Documents or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared, or be automatically, due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, each Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall

remain in full force and effect until Lender has exhausted all of its remedies against the Property, the Mortgage has been foreclosed, the Property has been sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full. To the extent permitted by applicable law, nothing contained in any Loan Document shall be construed as requiring Lender to resort to any portion of the Property for the satisfaction of any of the Debt in preference or priority to any other portion, and Lender may seek satisfaction out of the entire Property or any part thereof, in its discretion.

8.2.3 Severance. Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations and priorities of payment and liens as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies, provided that such severance shall not result in a material change in Borrowers' obligations under the Loan Documents. Each Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Each Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such severance, each Borrower ratifying all that such attorney shall do by virtue thereof.

8.2.4 Delay. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Agreement but subject to the terms of Section 10.1 hereof, Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of the Mortgage to the extent necessary to foreclose on all or any portion of the Property, the Rents, the Cash Accounts or any other collateral.

8.2.5 Lender's Right to Perform. If any Borrower fails to perform any covenant or obligation contained herein and such failure shall continue for a period of five Business Days after Borrowers' receipt of written notice thereof from Lender, without in any way limiting Lender's right to exercise any of its rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Lender may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and all costs, expenses, liabilities, penalties and fines of Lender incurred or paid in connection therewith shall be payable by Borrowers to Lender upon demand and if not paid shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan Documents) and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Lender shall have no obligation to send notice to any Borrower of any such failure. Additionally, during the continuance of an Event of Default, Lender shall have the right, but not the obligation, to make any Protective Advance (hereinafter defined) (provided, however, that Lender will only make such Protective Advance from its own funds if there are insufficient funds in the Cash Accounts),

and the same shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan Documents) and shall bear interest thereafter at the Default Rate. As used herein, "***Protective Advance***" 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, operating expenses, trade payables or other items with respect to the Property (including capital items) reasonably necessary to protect the Property or any other security given for the Loan or to preserve any of Lender's rights or remedies under the Loan Documents.

9. SPECIAL PROVISIONS

9.1 Sale of Note and Secondary Market Transaction.

9.1.1 General; Borrower Cooperation. Lender shall have the right at any time and from time to time (i) to sell or otherwise transfer the Loan or any portion thereof or the Loan Documents or any interest therein to one or more investors, (ii) to sell participation interests in the Loan to one or more investors or (iii) to securitize the Loan or any portion thereof in a single asset securitization or a pooled loan securitization of rated single or multi-class securities (the "***Securities***") secured by or evidencing ownership interests in the Note and the Mortgage (each such sale, assignment, participation and/or securitization is referred to herein as a "***Secondary Market Transaction***"). In connection with any Secondary Market Transaction, Borrowers shall, at Borrowers' reasonable expense, use all reasonable efforts and cooperate fully and in good faith with Lender and otherwise assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any such Secondary Market Transactions including: (a) to (i) provide such financial and other information with respect to the Property, Borrowers and their Affiliates, Manager and any tenants of the Property, (ii) provide business plans and budgets relating to the Property and (iii) perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested from time to time by Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to Lender pursuant to this paragraph (a) being called the "***Provided Information***"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to Lender and the Rating Agencies; (b) at Borrower's expense, cause counsel to render opinions customary in securitization transactions with respect to the Property, Borrower and its Affiliates, which counsel and opinions shall be reasonably satisfactory to Lender and the Rating Agencies; (c) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Property, Borrowers and the Loan Documents as are customarily provided in such transactions and as may be reasonably requested by Lender or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents; (d) provide current certificates of good standing and qualification with respect to Borrowers from appropriate Governmental Authorities; and (e) execute such amendments to the Loan Documents and Borrowers' organizational documents, as may be requested by Lender or the Rating Agencies or otherwise to effect a Secondary Market

Transaction, provided that nothing contained in this subsection (e) shall result in a material economic change in the transaction. Borrower shall pay all reasonable third party costs and expenses incurred by Lender in connection with a Secondary Market Transaction or a change in a material business term in the transaction, including but not limited to the terms hereof related to the tenants in common.

9.1.2 Use of Information. Borrowers understand that all or any portion of the Provided Information and the Required Records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "***Disclosure Document***") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "***Securities Act***"), or the Securities and Exchange Act of 1934, as amended (the "***Exchange Act***"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers or other parties relating to the Secondary Market Transaction. If the Disclosure Document is required to be revised, Borrowers shall cooperate with Lender in updating the Provided Information or Required Records for inclusion or summary in the Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to Borrowers, Manager and the Property necessary to keep the Disclosure Document accurate and complete in all material respects with respect to such matters.

9.1.3 Borrower Obligations Regarding Disclosure Documents. In connection with a Disclosure Document, Original Borrower (on behalf of Borrowers) shall: (a) if requested by Lender, certify in writing that Borrowers have carefully examined those portions of such Disclosure Document, pertaining to Borrowers, the Manager and the Loan, and that such portions do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) indemnify (in a separate instrument of indemnity, if so requested by Lender) (i) any underwriter, syndicate member or placement agent (collectively, the "***Underwriters***") retained by Lender or its issuing company affiliate (the "***Issuer***") in connection with a Secondary Market Transaction, (ii) Lender and (iii) the Issuer that is named in the Disclosure Document or registration statement relating to a Secondary Market Transaction (the "***Registration Statement***"), and each of the Issuer's directors, each of its officers who have signed the Registration Statement and each person or entity who controls the Issuer or the Lender within the meaning of Section 15 of the Securities Act or Section 30 of the Exchange Act (collectively within (iii), the "***GCM Group***"), and each of its directors and each person who controls each of the Underwriters, within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the "***Underwriter Group***") for any losses, claims, damages or liabilities (the "***Liabilities***") to which Lender, the GCM Group or the Underwriter Group may become subject (including reimbursing all of them for any legal or other expenses actually incurred in connection with investigating or defending the Liabilities) insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any of the Provided Information or in any of the applicable portions of such sections of the Disclosure Document applicable to Borrowers, Manager, the Property or the Loan, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in the applicable portions of such sections or necessary in order to make the statements in the applicable portions of such sections in light of the

circumstances under which they were made, not misleading; provided, however, that Borrowers shall not be required to indemnify Lender for any Liabilities relating to untrue statements or omissions which Borrowers identified to Lender in writing at the time of Borrowers' examination of such Disclosure Document.

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

9.1.5 **Indemnification Procedure**. Promptly after receipt by an indemnified party under Section 9.1.3 or 9.1.4 of notice of the commencement of any action for which a claim for indemnification is to be made against Borrowers, such indemnified party shall notify Borrowers in writing of such commencement, but the omission to so notify Borrowers will not relieve Borrowers from any liability that they may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to Borrowers. If any action is brought against any indemnified party, and it notifies Borrowers of the commencement thereof, Borrowers will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel satisfactory to such indemnified party in its discretion. After notice from Borrowers to such indemnified party under this Section 9.1.5, Borrowers shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both Borrowers and an indemnified party, and any indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to Borrowers, then the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Borrowers shall not be liable for the expenses of more than one separate counsel unless there are legal defenses available to it that are different from or additional to those available to another indemnified party.

9.1.6 **Contribution**. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.3 or 9.1.4 is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.3 or 9.1.4, Borrowers shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(F) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In

determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the GCM Group's and Borrowers' relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender and Borrowers hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

9.1.7 Rating Surveillance. Lender will retain the Rating Agencies to provide rating surveillance services on Securities. The pro rata expenses of such surveillance will be paid for by Borrowers based on the applicable percentage of such expenses determined by dividing the then outstanding Principal by the then aggregate outstanding amount of the pool created in the Secondary Market Transaction which includes the Loan.

9.1.8 Severance of Loan. Lender shall have the right, at any time (whether prior to, in connection with, or after any Secondary Market Transaction), with respect to all or any portion of the Loan, to modify, split and/or sever all or any portion of the Loan as hereinafter provided. Without limiting the foregoing, Lender may (i) cause the Note and the Mortgage to be split into a first and second mortgage 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 Note (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 and by a pledge of partnership or membership interests (directly or indirectly) in Borrowers (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 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, Borrowers (and Borrowers' constituent members, if applicable, and Guarantor) shall execute within two (2) Business Days after such request, such documentation as Lender may reasonably request to evidence and/or effectuate any such modification or severance.

10. MISCELLANEOUS

10.1 Exculpation.

10.1.1 Subject to the qualifications below, Lender shall not enforce the liability and obligation of any Borrower to perform and observe the obligations contained in the Loan Documents by any action or proceeding wherein a money judgment shall be sought against such Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest and rights under the Loan Documents, or in the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against a Borrower only to the extent of such Borrower's interest in the Property, in the Rents

and in any other collateral given to Lender, and Lender shall not sue for, seek or demand any deficiency judgment against a Borrower in any such action or proceeding under or by reason of or under or in connection with any Loan Document.

10.1.2 The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any Loan Document; (ii) impair the right of Lender to name one or more Borrowers as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (iii) affect the validity or enforceability of any of the Loan Documents or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases; (vi) constitute a prohibition against Lender to commence any other appropriate action or proceeding in order for Lender to fully realize the security granted by the Mortgage or to exercise its remedies against the Property; or (vii) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrowers, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) (collectively, "***Lender's Losses***") arising out of or in connection with the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as "***Borrowers' Recourse Liabilities***"):

(a) fraud or intentional misrepresentation by any Borrower or Guarantor in connection with obtaining the Loan;

(b) physical waste of the Property or any portion thereof, or after an Event of Default the removal or disposal of any portion of the Property;

(c) any Proceeds paid by reason of any Insured Casualty or any Award received in connection with a Condemnation or other sums or payments attributable to the Property not applied in accordance with the provisions of the Loan Documents (except to the extent that a Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments);

(d) all Rents of the Property received or collected by or on behalf of any Borrower after an Event of Default and not applied to payment of Principal and interest due under the Notes, and to the payment of actual and reasonable operating expenses of the Property, as they become due or payable (except to the extent that such application of such funds is prevented by bankruptcy, receivership, or similar judicial proceeding in which such Borrower is legally prevented from directing the disbursement of such sums);

(e) misappropriation (including failure to turn over to Lender on demand following an Event of Default) of tenant security deposits and rents collected in advance, or of funds held by any Borrower for the benefit of another party;

(f) the failure to pay Taxes, provided Borrowers shall not be liable (A) to the extent funds to pay such amounts are available in the Tax and Insurance Account and Lender failed to pay same;

(g) the breach of any representation, warranty, covenant or indemnification in any Loan Document concerning Environmental Laws or Hazardous Substances, including Sections 4.21 and 5.8, and clauses (viii) through (xi) of Section 5.30;

(h) the breach of Section 5.13;

(i) any Borrower or any Guarantor of such Borrower or any of their direct or indirect Affiliates taking any action or making any omission intended or reasonably likely to hinder, delay, impair or prevent Lender in or from enforcing any and all of its rights and remedies under or pursuant to the Loan Documents or at law or in equity (unless the same is brought in good faith and is reasonable in light of then-existing legal precedent or is determined in favor of such Borrower or Guarantor pursuant to a final, non-appealable judgment of a court of competent jurisdiction);

(j) the termination of, or failure to renew, the Management Agreement without Lender's consent, unless an acceptable replacement manager is appointed in accordance with Section 5.12.3 above (provided that only the Borrower(s) who voted in favor of such termination or failure to renew (or failed to consent to the appointment of such an acceptable replacement manager) will be liable under this provision);

(k) subject to the next succeeding sentence, the failure by any Borrower (each, for purposes of this subsection (k), a "***Dissenting Borrower***") to consent to a modification of the terms of the Loan in connection with a bona fide offer to purchase or refinance the Property or to prevent or cure an imminent or actual Event of Default after tenants in common constituting Borrower which together own 80 percent or more of the tenancy in common interests in the Property have approved such a modification. For purposes of this subsection (k), Lender shall have recourse solely against the Dissenting Borrower(s) to the extent of Lender's Losses with respect to the occurrence of any event giving rise to such matter which, for purposes of this subsection (k), (A) shall be deemed to be equal to any unpaid portion of the Debt that remains outstanding after Lender completes its realization with respect to the Property (and all of its other collateral for the Loan pursuant to any of the Loan Documents) and applies the proceeds of such realization to the Debt (the "Deficiency") and (B) with respect to each Dissenting Borrower shall be limited to an amount equal to the product of (1) the Deficiency and (2) such Dissenting Borrower's undivided tenant in common interest in the Property (expressed as a percentage).

10.1.3 Notwithstanding anything to the contrary in this Agreement or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(B) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt in accordance with the Loan Documents, and (B) Lender's agreement not to pursue personal liability of Borrowers as set forth above SHALL BECOME NULL AND VOID and shall be of no further force and effect, and the Debt shall be fully recourse to the applicable Borrower or Borrowers in an amount equal to the greater of (x) Lender's Losses arising out of or in connection with the following matters or (y) an amount equal to the product of (1) the unpaid balance of the Debt and (2) the applicable Borrower's respective undivided tenant in common interest in the Property (expressed as a percentage), in the event that one or more of the following occurs (each, a "***Springing Recourse Event***"): (i) an Event of Default

described in Section 8.1(d) shall have occurred, (ii) the occurrence of any condition or event described in either Section 8.1(f) or Section 8.1(g) (each, an "***Insolvency Action***") and, with respect to such Insolvency Action, either any Borrower, Guarantor or any Person owning an interest (directly or indirectly) in any Borrower, or Guarantor consents to, aids, solicits, supports, or otherwise cooperates or colludes to cause such Insolvency Action or fails to contest such Insolvency Action, except in the event that any such party has a fiduciary or legal duty to take such action, (iii) any involuntary bankruptcy proceeding is brought by any Borrower or its Guarantor or any of such Borrower's or its Guarantor's Affiliates against any other Borrower; (iv) if subsequent to the commencement of any voluntary bankruptcy proceeding with respect to any Borrower, any involuntary bankruptcy proceeding is brought by Lender against one or more Borrowers and any Borrower or such Borrower's Guarantor files any motion contesting the same; or (v) any Borrower, such Borrower's Guarantor or any Affiliate of such Borrower brings or joins in any action or proceeding for the partition of the Property or any portion thereof or interest therein.

Notwithstanding anything to the contrary in this Section 10.1 or in any Loan Document, Lender hereby agrees that (1) with respect to the matters described in clauses (a) through (k) of Borrowers' Recourse Liabilities, each TIC Borrower shall be liable only for its own acts, and no TIC Borrower shall be liable for such Borrowers' Recourse Liabilities occasioned as a result of the acts or omissions of any other Borrower or Manager, and (2) with respect to the matters described in clauses (i) through (v) of the Springing Recourse Events, if any such Springing Recourse Event arises from the acts or omissions of any individual TIC Borrower, then only such TIC Borrower (and such TIC Borrower's Guarantor) shall have the liability set forth in clause (B) above, and no other TIC Borrower (or such TIC Borrower's Guarantor) shall be liable as a result of such matter

10.2 **Brokers and Financial Advisors**.

(a) Each Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan. Borrowers shall indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses (including attorneys' fees, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrowers in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Agreement and the repayment of the Debt.

(b) Notwithstanding anything in Section 10.2(a) above to the contrary, Borrower hereby acknowledges that (i) at Lender's sole discretion, a broker that arranged the Loan may receive further consideration from Lender relating to the Loan or any other matter for which Lender may elect to compensate such broker pursuant to a separate agreement between Lender and such broker and (ii) Lender shall have no obligation to disclose to Borrower the existence of any such agreement or the amount of any such additional consideration paid or to be paid to such broker whether in connection with the Loan or otherwise.

10.3 **Retention of Servicer**. Lender reserves the right to retain the Servicer to act as its agent hereunder with such powers as are specifically delegated to the Servicer by Lender,

whether pursuant to the terms of this Agreement, any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction or otherwise, together with such other powers as are reasonably incidental thereto. Borrowers shall pay any reasonable fees and expenses of the Servicer (i) in connection with a release of the Property (or any portion thereof), (ii) from and after a transfer of the Loan to any "master servicer" or "special servicer" for any reason, including without limitation, as a result of a decline in the occupancy level of the Property, (iii) in connection with assumption or modification of the Loan, (iv) in connection with enforcement of the Loan Documents, or (v) in connection with any other action or approval taken by Servicer hereunder on behalf of Lender.

10.4 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as any of the Debt is unpaid or such longer period if expressly set forth in this Agreement. All Borrowers' covenants and agreements in this Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of Lender.

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

10.6 Governing Law.

(a) THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF SOUTH CAROLINA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF SOUTH CAROLINA SHALL GOVERN THE VALIDITY AND THE ENFORCEABILITY OF ALL LOAN DOCUMENTS AND THE DEBT. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR ANY BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL

BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN RICHLAND COUNTY, SOUTH CAROLINA, AND EACH BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH BORROWER DOES HEREBY DESIGNATE AND APPOINT CT CORPORATION SYSTEM AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN RICHLAND COUNTY, SOUTH CAROLINA, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE OF SUCH BORROWER MAILED OR DELIVERED TO SUCH BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON SUCH BORROWER (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE), IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF SOUTH CAROLINA. EACH BORROWER (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN SOUTH CAROLINA (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN SOUTH CAROLINA OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

10.7 **Modification, Waiver in Writing**. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by any Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on any Borrower shall entitle any Borrower to any other or future notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare an Event of Default for failure to effect prompt payment of any such other amount.

10.8 **Trial by Jury**. EACH BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN

KNOWINGLY AND VOLUNTARILY BY EACH BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

10.9 **Headings/Exhibits**. The Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. The Exhibits attached hereto, are hereby incorporated by reference as a part of the Agreement with the same force and effect as if set forth in the body hereof.

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

10.11 **Preferences**. Upon the occurrence and continuance of an Event of Default, Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrowers to any portion of the Debt. To the extent Borrowers make a payment to Lender, or Lender receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Debt or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender. This provision shall survive the expiration or termination of this Agreement and the repayment of the Debt.

10.12 **Waiver of Notice**. No Borrower shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or any other Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower and except with respect to matters for which such Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Each Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which no Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower.

10.13 **Intentionally Omitted.**

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

10.15 **Offsets, Counterclaims and Defenses**. Each Borrower hereby waives the right to offset any obligations to make payments required under the Loan Documents. Any assignee

of Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which one or more Borrowers may otherwise have (including with respect to any default or dispute relating thereto) against any assignor of such documents, and no such offset shall be interposed or asserted by one or more Borrowers in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such offset in any such action or proceeding is hereby expressly waived by Borrowers.

10.16 Publicity. All news releases, publicity or advertising by any Borrower or its Affiliates through any media intended to reach the general public, which refers to the Loan Documents, the Loan, Lender or any member of the GCM Group, a Loan purchaser, the Servicer or the trustee in a Secondary Market Transaction, shall be subject to the prior written approval of Lender. Lender shall have the right to issue any of the foregoing without any Borrower's approval.

10.17 No Usury. Borrowers and Lender intend 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 10.17 shall control every other agreement in the 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 any other Loan Document, 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 Loan or any prepayment by Borrowers results in Borrowers having paid any interest in excess of that permitted by applicable law, then it is Borrowers' and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited against the unpaid Principal and all other Debt (or, if the Debt has been or would thereby be paid in full, refunded to Borrowers), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the 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 in any Loan Document, 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.

10.18 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that each is represented by separate counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

10.19 No Third Party Beneficiaries. The Loan Documents are solely for the benefit of Lender and Borrowers and nothing contained in any Loan Document shall be deemed to confer

upon anyone other than the Lender and Borrowers any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

10.20 Yield Maintenance Premium. Borrowers acknowledge that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents and (b) if payments of Principal are made to Lender prior to the Stated Maturity Date, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan after an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs. For these reasons, and to induce Lender to make the Loan, Borrowers agree that, except as expressly provided in Sections 2.3 and 7, all prepayments, if any, whether voluntary or involuntary, will be accompanied by the Yield Maintenance Premium. Such Yield Maintenance Premium shall be required whether payment is made by one or more Borrowers, by a Person on behalf of one or more Borrowers, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrowers further acknowledge that (A) they are knowledgeable real estate developers and/or investors; (B) they fully understand the effect of the provisions of this Section 10.20, as well as the other provisions of the Loan Documents; (C) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrowers' obligation to pay a Yield Maintenance Premium (if required); and (D) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrowers also acknowledge that the provisions of this Agreement limiting the right of prepayment and providing for the payment of the Yield Maintenance Premium and other charges specified herein were independently negotiated and bargained for, and constitute a specific material part of the consideration given by Borrowers to Lender for the making of the Loan except as expressly permitted hereunder.

10.21 Assignment. The Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein may be assigned by Lender and any of its successors and assigns to any Person at any time in its discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise. Upon such assignment, all references to Lender in this Loan Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of Lender. No Borrower may assign its rights, title, interests or obligations under this Loan Agreement or under any of the Loan Documents, except in connection with a Permitted Transfer.

10.22 Original Borrower as Borrowers' Designee. Each of the Borrowers hereby authorizes, designates and directs Original Borrower to give Lender directions of any kind, to take the actions or make such deliveries specified herein to be taken or delivered by Original Borrower (including under Sections 6.3 and 9.1, and including with respect to any requisitions from any reserve accounts under Article 3) and to give and receive notices of any kind on behalf of such Borrower under this Agreement or any of the other Loan Documents. Any notice given by Lender to Original Borrower shall be deemed to have been given to each and every Borrower.

10.23 **[Intentionally deleted.]**

10.24 Joint and Several. Except to the extent expressly provided otherwise in the Loan Documents, each of the Borrowers shall be jointly and severally liable for payment of the Debt and performance of all other obligations of Borrowers (or any of them) under this Agreement or any other Loan Document.

10.25 Set-Off. In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, Lender shall have the right, without prior notice to any Borrower, any such notice being expressly waived by each Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by any Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrowers. Lender agrees promptly to notify Borrowers after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

10.26 1031 Exchange. Original Borrower acknowledges that it has established an ownership structure for the Property in order to, among other things, obtain certain tax benefits afforded under the provisions of Section 1031 of the Code. Each Borrower expressly acknowledges that, together with its own professional advisors and legal counsel, it has performed its own due diligence and legal analysis relating to a tenancy in common ownership structure and to the financial, tax, legal and other issues as it had deemed necessary or appropriate to make an informed investment decision to purchase a tenancy in common interest in the Property. Each Borrower expressly acknowledges that Lender has not acted in any way whatsoever as an advisor to any Borrower with respect to the foregoing and agrees that Lender shall have no responsibility or express or implied liability whatsoever with respect to any of the foregoing.

10.27 Certain Additional Rights of Lender. Notwithstanding anything to the contrary which may be contained in this Agreement, Lender shall have:

(i) the right to routinely consult with the Manager or Original Borrower regarding the significant business activities and business and financial developments of Borrowers, provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times;

(ii) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrowers during normal business hours upon reasonable notice;

(iii) the right, in accordance with the terms of this Agreement, to receive monthly, quarterly and year-end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness;

(iv) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to restrict financing to be obtained with respect to the Property so long as any portion of the Debt remains outstanding; and

(v) the right, without restricting any other right of Lender under this Agreement or the other Loan Documents (including any similar right), to restrict, upon the occurrence of an Event of Default, Borrowers' payments of management, consulting, director or similar fees to Affiliates of Borrowers from the Rents.

10.28 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

10.29 Reasonable Attorney's Fees. Whenever the term "reasonable attorney's fees" is used in the Loan Documents, such term shall be deemed to mean reasonable attorney's fees actually incurred without regard to any statute or case law regarding attorneys' fees as liquidated damages.

[Remainder of Page Intentionally Left Blank]

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

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company
Its Manager

By: _____
Name: H. Michael Schwartz
Title: President

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: _____
Name: David B. Kennard
Title: Managing Director

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

FONTAINE BUSINESS PARK, LLC,
a Delaware limited liability company

By: U.S. COMMERCIAL LLC,
a Virginia limited liability company
Its Manager

By: _____
Name: H. Michael Schwartz
Title: President

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On 12/13/2007, before me, TIMOTHY JOSEPH LEVENS, ~~the undersigned~~, a notary public for the state, personally appeared H. MICHAEL SCHWARTZ, ~~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 _____ (SEAL)

TIMOTHY JOSEPH LEVENS
Commission # 1616483
Notary Public - California
Orange County
My Comm. Expires Oct 28, 2009

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, 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.

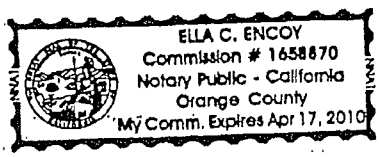
Signature _____ (SEAL)

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ORANGE

On December 13, 2007 (date), before me, Ella C. Encoy (name and title "Notary Public"), personally appeared David B. Kennard (name~~[s]~~ of signer~~[s]~~), 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 Ella Encoy
(Signature of Notary Public)

My Commission expires: April 17, 2010

(This area for official seal)

Schedule 1

Required Repairs

TABLE 2

CAPITAL REPLACEMENT RESERVE SCHEDULE

Project No. 07-53903.4

10/19/2007

Definitions

EUL: Expected Useful Life

EFF AGE: Effective age

RUL: Remaining Useful Life

Quantity: Total Quantity Onsite

Property: Fontaine V
201 Arbor Lake Drive
Columbia, South Carolina 29223

Projected Term:	12
Building Age:	16
No. of Buildings:	1
No. of Units:	NA
Gross sf:	21,107

	EUL	EFF AGE	RUL	QUANTITY	UNIT COST	UNIT	PHOTO #	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL REPLACEMENTS
SITE IMPROVEMENTS																						
Asphalt Paving - Seal Coat / Stripin	5	2	3	38,070	$0.12	SF	2.3.3	-	-	$2,284	-	-	-	-	$2,284	-	-	-	-			$4,568
STRUCTURAL FRAME/FOUNDATION																						
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-			$0
FAÇADE/EXTERIOR WALLS																						
Building Exterior - Clean, Caulk, Seal, Tuck-poi	10	5	5	1	$5,000	LS	2.5.1	-	-	-	-	$5,000	-	-	-	-	-	-	-			$5,000
ROOFING																						
Roof Coverings Replacements	20	16	4	21,107	$3.00	SF	2.5.1	-	-	-	$63,321	-	-	-	-	-	-	-	-			$63,321
MECHANICAL, ELECTRICAL & PLUMBING SYSTEMS																						
Tenant Responsibilit	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-			$0
VERTICAL TRANSPORTATION																						
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-			$0
LIFE SAFETY/FIRE PROTECTION																						
None required	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-			$0
INTERIOR ELEMENTS																						
Tenant Responsibilit	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-			$0
							TOTAL UNINFLATED	$0	$0	$2,284	$63,321	$5,000	$0	$0	$2,284	$0	$0	$0	$0			$72,889
							Inflation Factor @ 3.0%	100.00%	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%			-
							TOTAL INFLATED	$0	$0	$2,423	$69,193	$5,628	$0	$0	$2,809	$0	$0	$0	$0			$80,053
							CUMULATIVE TOTAL INFLATED	$0	$0	$2,423	$71,616	$77,243	$77,243	$77,243	$80,053	$80,053	$80,053	$80,053	$80,053			-

RESERVE SUMMARY	Total Uninflated	Total Inflated
Total Reserves	$72,889	$80,053
Per SF Reserves (All Years)	$3.45	$3.79
Per SF (Per Year)	$0.29	$0.32

FBPAPP-0443

TABLE 1
IMMEDIATE REPAIR AND DEFERRED MAINTENANCE EXPENDITURES

Project No. 07-53903.1

October 19, 2007

Property: Fontaine I
300 Arbor Lake Drive
Columbia, South Carolina 29223

ITEM	QUANTITY	UNITS	UNIT COST	IMMEDIATE COST	COMMENTS
Asphalt Paving	176,985	SF	$0.12	$21,238	Isolated areas are damaged and in need of repair. After repairs, entire surface should be seal coated and re-striped.
Pedestrian Walkways	3	EA	$250	$750	Repair root heaved and settled walkway sections along the west, south, and east building perimeters.
Landscaping	1	LS	$1,000	$1,000	Retain a licensed landscaping firm to survey entire property and trim tree branches away from building exteriors and roof lines.
HVAC - Replace allowance	6	TON	$850	$4,835	Anticipated year one normalized HVAC replacement costs
				$0	

TOTAL ESTIMATED COST	$27,824

FBPAPP-0444

TABLE 2

CAPITAL REPLACEMENT RESERVE SCHEDULE

Project No. 07-53903.1

10/19/2007

Definitions
EUL: Expected Useful Life
EFF AGE: Effective age
RUL: Remaining Useful Life
Quantity: Total Quantity Onsite

Property: Fontaine I
300 Arbor Lake Drive
Columbia, South Carolina 29223

Projected Term:	12
Building Age:	22
No. of Buildings:	1
No. of Units:	NA
Gross sf:	99,554

ITEM	EUL	EFF AGE	RUL	QUANTITY	COST	UNIT	REPLACE	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	TOTALS
SITE IMPROVEMENTS																				
Asphalt Paving - Seal Coat / Striping	5	0	5	353,970	$0.12	SF	2.3.3	-	-	-	-	$21,238	-	-	-	-	$21,238	-	-	$42,476
STRUCTURAL FRAME/FOUNDATION																				
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-	$0
FAÇADE/EXTERIOR WALLS																				
Building Exterior - Clean, Caulk, Seal, Tuck-pou	10	5	5	1	$10,000	LS	2.5.1	-	-	-	-	$10,000	-	-	-	-	-	-	-	$10,000
ROOFING																				
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-	$0
MECHANICAL, ELECTRICAL & PLUMBING SYSTEMS																				
HVAC Equipment - Package Unit Replacement	20-25	1-20	1-20	63	$850	Ton	2.5.1	-	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$4,835	$53,190
VERTICAL TRANSPORTATION																				
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-	$0
LIFE SAFETY/FIRE PROTECTION																				
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-	$0
INTERIOR ELEMENTS																				
Tenant Responsibility	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-	$0
							TOTAL UNINFLATED	$0	$4,835	$4,835	$4,835	$36,074	$4,835	$4,835	$4,835	$4,835	$26,074	$4,835	$4,835	$105,667
							Inflation Factor @ 3.0%	100.00%	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%	-
							TOTAL INFLATED	$0	$4,981	$5,130	$5,284	$40,601	$5,606	$5,774	$5,947	$6,125	$34,020	$6,498	$6,693	$126,660
							CUMULATIVE TOTAL INFLATED	$0	$4,981	$10,111	$15,394	$55,996	$61,601	$67,375	$73,322	$79,448	$113,468	$119,966	$126,660	-

RESERVE SUMMARY	Total Uninflated	Total Inflated
Total Reserves	$105,667	$126,660
Per SF Reserves (All Years)	$1.06	$1.27
Per SF (Per Year)	$0.09	$0.11

LandAmerica Assessment Corporation

FBPAPP-0445

TABLE 1
IMMEDIATE REPAIR AND DEFERRED MAINTENANCE EXPENDITURES

Project No. 07-53903.2

October 19, 2007

Property: Fontaine II
400 Arbor Lake Drive
Columbia, South Carolina 29223

ITEM	QUANTITY	UNITS	UNIT COST	IMMEDIATE COST	COMMENTS
Asphalt Paving	136,485	SF	$0.12	$16,378	Isolated areas are damaged and in need of repair. After repairs, entire surface should be seal coated and re-striped.
Pedestrian Walkways	2	EA	$250	$500	Repair root heaved and settled walkway sections along the east building perimeter.
HVAC - Replace allowance	4	TON	$850	$3,572	Anticipated year one normalized HVAC replacement costs
Common Area Carpeting	1	LS	$3,500	$3,500	Replacement allowance
TOTAL ESTIMATED COST				**$23,951**	

FBPAPP-0446

TABLE 2

CAPITAL REPLACEMENT RESERVE SCHEDULE

Project No. 07-53903.2

10/19/2007

Definitions
EUL: Expected Useful Life
EFF AGE: Effective age
RUL: Remaining Useful Life
Quantity: Total Quantity Onsite

Property: Fontaine II
400 Arbor Lake Drive
Columbia, South Carolina 29223

Projected Term:	12
Building Age	20
No. of Buildings:	1
No. of Units	NA
Gross sf:	73,548

ITEM DESCRIPTION	EUL	EFF AGE	RUL	QUANTITY	UNIT COST	UNIT	REFERENCE	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL 12 YEARS
SITE IMPROVEMENTS																					
Asphalt Paving - Seal Coat / Stripin	5	0	5	272,970	$0.12	SF	2.3.3	-	-	-	-	$16,378	-	-	-	-	$16,378	-	-		$32,756
STRUCTURAL FRAME/FOUNDATION																					
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-		$0
FAÇADE/EXTERIOR WALLS																					
Building Exterior - Clean, Caulk, Seal, Tuck-poi	10	5	5	1	$10,000	LS	2.5.1	-	-	-	-	$10,000	-	-	-	-	-	-	-		$10,000
ROOFING																					
Roof Coverings Replacements	20	20	3	73,548	$3.00	SF	2.5.1	-	-	$220,644	-	-	-	-	-	-	-	-	-		$220,644
MECHANICAL, ELECTRICAL & PLUMBING SYSTEMS																					
HVAC Equipment - Package Unit Replacement	20-25	1-20	1-20	46	$850	Ton	2.5.1	-	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572	$3,572		$39,296
VERTICAL TRANSPORTATION																					
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-		$0
LIFE SAFETY/FIRE PROTECTION																					
None Anticipatec	NA	NA	NA	NA	NA	NA	NA	-	-	-	-	-	-	-	-	-	-	-	-		$0
INTERIOR ELEMENTS																					
Common Area Carpetinc	7	0	7	1	$3,500	Allow	2.10.4	-	-	-	-	-	-	$3,500	-	-	-	-	-		$3,500
							TOTAL UNINFLATED	$0	$3,572	$224,216	$3,572	$29,951	$3,572	$7,072	$3,572	$3,572	$19,951	$3,572	$3,572		$306,196
							Inflation Factor @ 3.0%	100.00%	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%		-
							TOTAL INFLATED	$0	$3,680	$237,871	$3,904	$33,710	$4,141	$8,445	$4,394	$4,525	$26,031	$4,801	$4,945		$336,445
							CUMULATIVE TOTAL INFLATED	$0	$3,680	$241,551	$245,454	$279,164	$283,305	$291,750	$296,143	$300,669	$326,700	$331,500	$336,445		-

RESERVE SUMMARY	Total Uninflated	Total Inflated
Total Reserves	$306,196	$336,445
Per SF Reserves (All Years)	$4.16	$4.57
Per SF (Per Year)	$0.35	$0.38

Land/Amerlca Assurance Corporation

FBPAPP-0447

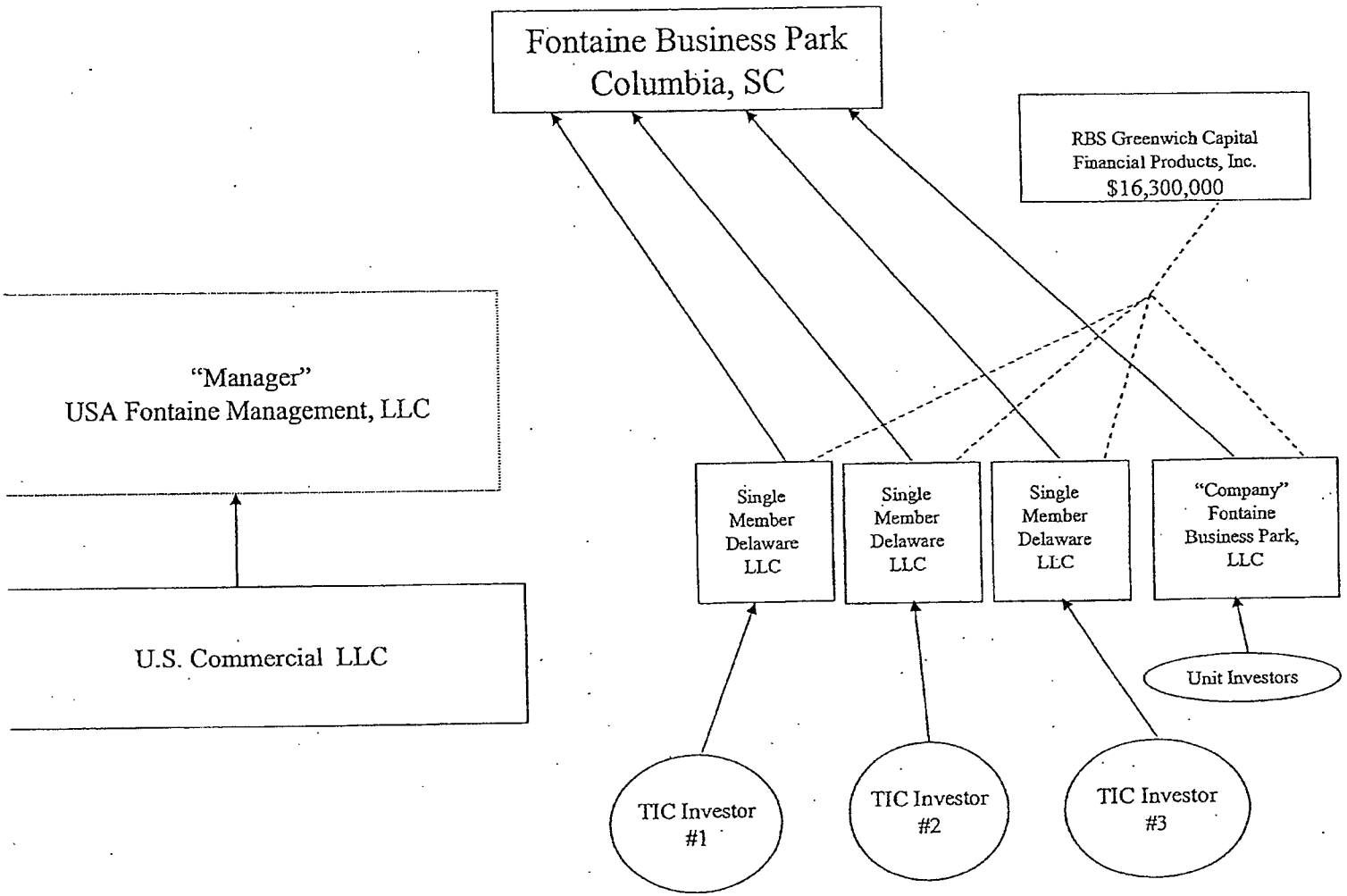
Schedule 2

Exceptions to Representations and Warranties

NONE

Schedule 3

Organization of Borrower


Fontaine Business Park
Columbia, SC
RBS Greenwich Capital
Financial Products, Inc.
$16,300,000
"Manager"
USA Fontaine Management, LLC
U.S. Commercial LLC
Single Member Delaware LLC
Single Member Delaware LLC
Single Member Delaware LLC
"Company" Fontaine Business Park, LLC
Unit Investors
TIC Investor #1
TIC Investor #2
TIC Investor #3

Schedule 4

Definition of Special Purpose Bankruptcy Remote Entity

A "*Special Purpose Bankruptcy Remote Entity*" means (x) a limited liability company that is a Single Member Bankruptcy Remote LLC or (y) a corporation, limited partnership or limited liability company which at all times since its formation and at all times thereafter:

(i) was and will be organized solely for the purpose of (A) owning the Property or (B) acting as a general partner of the limited partnership that owns the Property or member of the limited liability company that owns the Property;

(ii) has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as general partner of the limited partnership that owns the Property or (C) acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not had and will not have any assets other than those related to the Property or its partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable;

(iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable);

(v) [Intentionally deleted]

(vi) [Intentionally deleted]

(vii) [Intentionally deleted]

(viii) if such entity is a limited liability company, has and will have articles of organization, a certificate of formation and/or an operating agreement, as applicable, providing that (A) such entity will dissolve only upon the bankruptcy of the managing member, (B) the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the limited liability company following the bankruptcy of the managing member is not obtained, the limited liability company may not liquidate the Property without the consent of the applicable Rating Agencies for as long as the Loan is outstanding;

(ix) has not, and without the unanimous consent of all of its partners, directors or members, as applicable, will not, with respect to itself or to any other entity

in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

(x) has remained and will remain solvent and has maintained and will maintain adequate capital in light of its contemplated business operations;

(xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;

(xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) has not commingled and will not commingle its funds or assets with those of any other Person;

(xv) has held and will hold its assets in its own name;

(xvi) has conducted and will conduct its business in its name,

(xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(xix) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(xx) has maintained and will maintain an arm's-length relationship with its Affiliates;

(xxi) (a) if such entity owns the Property, has and will have no indebtedness other than Permitted Indebtedness, or (b) if such entity acts as the general partner of a limited partnership which owns the Property, has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Property which (1) do not exceed, at any time, $10,000 and (2) are paid within thirty (30) days of the date incurred, or (c) if such entity acts as a managing member of a limited liability company which owns the Property, has and will have no indebtedness other than

unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, $10,000 and (2) are paid within thirty (30) days of the date incurred;

(xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

(xxiii) has not and will not acquire obligations or securities of its partners, members or shareholders;

(xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(xxv) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(xxvii) has maintained 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 other Person;

(xxviii) has not made and will not make loans to any Person;

(xxix) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

(xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxxi) has and will have no obligation to indemnify its partners, officers, directors, members or Special Members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation; and

(xxxii) will consider the interests of its creditors in connection with all corporate, partnership or limited liability actions, as applicable.

"*Single Member Bankruptcy Remote LLC*" means a limited liability company organized under the laws of the State of Delaware which at all times since its formation and at all times

thereafter (i) complies with the following clauses of the definition of Special Purpose Bankruptcy Remote Entity above: (i)(A), (ii)(A), (iii), (iv), (ix), (x), (xi) and (xiii) through (xxxii); (ii) has maintained and will maintain its accounts, books and records separate from any other person; (iii) [intentionally deleted]; (iv) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) upon the occurrence of any event that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), the person designated as a "Special Member" of Borrower shall, without any action of any Person and simultaneously with Sole Member ceasing to be a member of Borrower, automatically be admitted as the sole member of Borrower (the "*Special Member*") and shall preserve and continue the existence of Borrower without dissolution, (B) no Special Member may resign or transfer its rights as Special Member unless a successor Special Member has been admitted to Borrower as a Special Member, and (C) except as expressly permitted pursuant to the terms of this Agreement, Sole Member may not resign and no additional member shall be admitted to Borrower; (v) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) Borrower shall be dissolved, and its affairs shall be would up only upon the first to occur of the following: (x) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the "*Act*") or (y) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (B) upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing to continue the existence of Borrower and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (C) the bankruptcy of Sole Member or a Special Member shall not cause such member or Special Member, respectively, to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution; (D) in the event of dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Borrower in an orderly manner), and the assets of Borrower shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (E) to the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Borrower or any of its assets to be partitioned, to cause the appointment

of a receiver for all or any portion of the assets of Borrower, to compel any sale of all or any portion of the assets of Borrower pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

Schedule 5

Form of Guaranty of Recourse Obligations

(See attached)

Schedule 6

Form of Loan Assumption Agreement

(See attached)

Schedule 7

Rent Roll

(See Attached)

Certificate of Rent Roll and Lease Provisions

Property Name: FONTAINE BUSINESS PARK

The undersigned borrower/principal hereby certifies, represents and warrants to Situs Realty Services, Inc., Greenwich Capital Financial Products, Inc. and any and all rating agencies, that:

- The attached Rent Roll dated 11/01/07 is true, correct and complete list including all the current lease terms of all the tenants currently leasing space in the subject property;

- There are no current tenants, except as specified below or in the tenant estoppel certificates, who have provisions in their current leases for:

1. Early termination of the lease term prior to its maturity except due to casualty or condemnation
2. Decreasing the base or minimum fixed rent below the current rent
3. Terminating the lease because another tenant ceases to occupy its space in the subject property
4. Ceasing to occupy the demised premises but continuing to pay rent for the remainder of the lease term
5. Exclusive right to operate a type of business in the subject property
6. Expansion and contraction of the demised premises
7. Options to purchase all or part of the subject property

List all tenants who have any of the above lease provisions and the above number corresponding to that tenant (attach additional sheets, if necessary):

Early Termination – US Government – U.S. Army Medical Department Detachment 2nd Brigade, Suite B-700 – Fontaine II

Also – See attached report prepared by Helix Financial

Borrower/Principal: US Commercial, LLC

Signature: Stephen Corea Date: Nov. 8, 2007

HELIX FINANCIAL

- Lease Review

  ✓ Lease abstracts were prepared for all the in-place tenants.
  ✓ The lease terms were compared with the most current rent roll received dated 10/18/07.

The key discrepancies are:

Particulars	Details	Comments
Base Rent	Patterson Dental Supply	Per rent roll the base rent is $9.90 psf and total rent is $15.89 psf that includes CAM reimbursement of $0.89 psf and other reimbursement of $5.60 psf. However, per the Lease, the base rent is $15.50 psf. The lease also states expense stop provision at $5.60 psf. It appears that in rent roll the expense stop has been deducted from the base rent.
Base Rent	Xerox	Per rent roll the base rent is $11.06 psf and total rent is $18.02 psf that includes CAM reimbursement of $1.21 psf and other reimbursement of $5.75 psf. However, per the Lease, the base rent is $16.81 psf. The lease also states expense stop provision at $5.75 psf so here also it seems that in rent roll the expense stop has been deducted from the base rent.
Base Rent	Clean Harbors Environmental	There is a discrepancy in the rent bump schedule given in the rent roll as compared to in-place Lease. Per the lease, from May 2008 the rent is bumped by $14.94 psf, however per the rent roll the same is stated at $14.50 psf and thereafter.
Base Rent	South Carolina Retirement	Per rent roll the base rent is $11.33 psf. Per lease the $11.33 psf consists of $4.46 of Base Rent and $6.87 psf of reimbursements in Year 1. The Reimbursement component increases with increased costs, but is capped by a specified amount each year.

0.39

Highwoods PROPERTIES

Rent Roll By Property Mgr as of 11/01/2007

Date: 11/1/2007

Building: 21311
Sqft: 99,554
Division: CHR

FONTAINE I

All Billing

Suite	Tenant	Lease	Sq Ft	Lease Comm	Lease Exp	Move Out	Last Increase	Next Increase	Base Rent	Other Rent	Total Monthly Rent	Type	Begin Date	End Date	Amount	Rent/SF
ROOF	Time Warner Telecom of SC, LLC		0	01/18/2002	01/18/2002	M-T-M										
ROOF	228256	33128														
100	First-Citizens Bank & Trust Co		9,527	02/01/2002	02/01/2002	1/31/2012	11,408.59	163.97		1,500.00	13,072.56					
100	222362	22007			13,072.56		14.37	0.21		1.89	16.47					
												BRNT				
													2/1/2002	01/31/2004	10,916.36	M 13.75
													2/1/2004	01/31/2006	11,162.47	M 14.06
													2/1/2006	01/31/2008	11,408.59	M 14.37
													2/1/2008	01/31/2010	11,670.58	M 14.70
													2/1/2010	01/31/2012	11,940.51	M 15.04
												CAME				
													1/1/2007	12/31/2007	163.97	M 0.21
												TUTL				
													10/1/2004	01/31/2012	1,500.00	M 1.89
1300	Vacant		15,805													
1300																
200	Staples, Inc.		36,386	01/09/2007	04/01/2007	9/30/2017	40,934.25				40,934.25					
200	247102	63968			40,934.25		13.50				13.50					
												BRNT				
													10/1/2007	09/30/2008	40,934.25	M 13.50
													10/1/2008	09/30/2009	41,510.36	M 13.69
													10/1/2009	09/30/2010	42,086.47	M 13.88
													10/1/2010	09/30/2011	42,692.91	M 14.08
													10/1/2011	09/30/2012	43,299.34	M 14.28
													10/1/2012	09/30/2013	43,936.10	M 14.49
													10/1/2013	09/30/2014	44,572.85	M 14.70
													10/1/2014	09/30/2015	45,239.93	M 14.92
													10/1/2015	09/30/2016	45,907.00	M 15.14
													10/1/2016	09/30/2017	46,604.40	M 15.37
												MRNT				
													4/1/2007	09/30/2007	40,358.14	M 13.31
													4/1/2007	09/30/2007	-40,358.14	M -13.31
800	Staples, Inc.		37,836	01/09/2007	01/09/2007	9/30/2017	42,565.50				42,565.50					
800	247102	63968			42,565.50		13.50				13.50					
												BRNT				
													10/1/2007	09/30/2008	42,565.50	M 13.50
													10/1/2008	09/30/2009	43,164.57	M 13.69
													10/1/2009	09/30/2010	43,763.64	M 13.88
													10/1/2010	09/30/2011	44,394.24	M 14.08
													10/1/2011	09/30/2012	45,024.84	M 14.28
													10/1/2012	09/30/2013	45,686.97	M 14.49

FBPAPP-0461

Rent Roll By Property Mgr as of 11/01/2007

FONTAINE I

Building: 21311
Sqft: 99,554
Division: CHR

All Billing

Suite	Tenant	Type	Lease	Floor	Cat	Sec Dep	Lease	Actual	Expire	Term	Rent	Yrly Rent	Escalation	Other	Amount	Pct	Chrgs	Type	Begin Date	End Date	Amount	Pct	Chrgs
																			10/1/2013	09/30/2014	46,349.10	M	14.70
																			10/1/2014	09/30/2015	47,042.76	M	14.92
																			10/1/2015	09/30/2016	47,736.42	M	15.14
																			10/1/2016	09/30/2017	48,461.61	M	15.37
																		MRNT					
																			1/9/2007	09/30/2007	41,966.43	M	13.31
																			1/9/2007	09/30/2007	-41,966.43	M	-13.31
TOTALS:												94,908.34	163.97	0.00	1,500.00	96,572.31							

	Building Square Feet:	99,554		
	Occupied Square Feet:	83,749		
	Vacant Square Feet:	15,805		
	Occupancy Percent:	84.12%	*Missing Square Feet:*	*0*

Building: 21321
Sqft: 73,548
Division: CHR

FONTAINE II

All Billing

Suite	Tenant	Lease	Sq Ft	Lease Beg	Lease Exp	Base Rent	Other	Total Monthly	Rent Type	Code	Begin Date	End Date	Amount	Escl %
A100	Patterson Dental Supply, Inc.		11,218	12/15/2004	12/31/2011	9,254.85	365.40	5,235.07	14,855.32					
A100	501749	46990				14,855.32			15.89					
										BRNT				
											12/15/2004	06/30/2005	13,788.79	M 14.75
											7/1/2005	12/31/2005	8,553.72	M 9.15
											1/1/2006	12/31/2006	8,899.61	M 9.52
											1/1/2007	12/31/2007	9,254.85	M 9.90
											1/1/2008	12/31/2008	9,628.78	M 10.30
											1/1/2009	12/31/2009	10,012.06	M 10.71
											1/1/2010	12/31/2010	10,414.04	M 11.14
											1/1/2011	12/31/2011	10,834.72	M 11.59
										CAME				
											1/1/2007	12/31/2007	365.40	M 0.39
										CONC				
											12/15/2004	12/31/2004	-13,788.79	M -14.75
											1/1/2005	06/30/2005	-6,889.72	M -7.37
										OPXE				
											7/1/2005	12/31/2011	5,235.07	M 5.60
A800	Limestone College		26,446	07/01/2007	07/01/2007	6/30/2012	39,669.00			39,669.00				
A800	247548	64469					18.00			18.00				
										BRNT				
											7/1/2007	07/31/2007	39,669.00	M 18.00
											8/1/2007	07/31/2008	39,669.00	M 18.00
											7/1/2008	06/30/2009	40,659.07	M 18.54
											7/1/2009	06/30/2010	42,093.22	M 19.10
											7/1/2010	06/30/2011	43,349.40	M 19.67
											7/1/2011	06/30/2012	44,649.66	M 20.26
A900	Honeywell International, Inc.		8,028	02/01/2006	02/01/2006	1/31/2011	6,542.82	1,760.60		8,303.42				
A900	241458	54869					9.78	2.63		12.41				
										BRNT				
											2/1/2006	01/31/2007	6,355.50	M 9.50
											2/1/2007	01/31/2008	6,542.82	M 9.78
											2/1/2008	01/31/2009	6,743.52	M 10.08
											2/1/2009	01/31/2010	6,944.22	M 10.38
											2/1/2010	01/31/2011	7,151.61	M 10.69
										CAME				
											1/1/2007	12/31/2007	1,760.60	M 2.63
										CONC				
											2/1/2006	04/30/2006	-6,355.50	M -9.50
B100	Clean Harbors Environmental		10,360	06/01/2007	06/01/2007	5/31/2013	12,518.33			12,518.33				
B100	247495	64397				-10,466.37	14.50			14.50				

Building: 21321
Sqft: 73,548
Division: CHR

FONTAINE II

All Billing

Suite	Tenant	Sq Ft	Lease Type	Term	Move In Date	Lease Exp Date	Term	Rent Per Sq Ft	Annual Rent	Other Income	Monthly Rent	Code	Begin Date	End Date	Amount	Per Sq Ft
B300	Tele/security		933	02/01/2007	02/01/2007	12/31/2029										
B300	501388	63976										BRNT				
													2/1/2007	12/31/2029	321.11	M 4.13
												MCON				
													2/1/2007	12/31/2029	-321.11	M -4.13
B400	Vacant		831													
B400																
B450	Biotel, Inc.		2,903	11/01/2005	11/01/2005	4/30/2009	3,592.46	61.84	3,654.30							
B450	241223	54551				3,401.30	14.85	0.26	15.11			BRNT				
													11/1/2005	04/30/2007	3,507.79	M 14.50
													5/1/2007	04/30/2008	3,592.46	M 14.85
													5/1/2008	04/30/2009	3,689.22	M 15.25
												CAME				
													1/1/2007	12/31/2007	61.84	M 0.26
												CONC				
													11/1/2005	04/30/2006	-3,507.79	M -14.50
B500	TelCove		3,352	10/01/2005	10/01/2005	12/31/2010	4,190.00		4,190.00							
B500	501709	30779				4,190.00	15.00		15.00			BRNT				
													10/1/2005	12/31/2006	4,050.33	M 14.50
													1/1/2007	12/31/2007	4,190.00	M 15.00
													1/1/2008	12/31/2008	4,329.66	M 15.50
													1/1/2009	12/31/2009	4,469.33	M 16.00
													1/1/2010	12/31/2010	4,609.00	M 16.50
												CONC				
													10/1/2005	12/31/2005	-4,050.33	M -14.50

Rent Roll By Property Mgr as of 11/01/2007

FONTAINE II

Building: 21321
Sqft: 73,548
Division: CHR

All Billing

Suite	Tenant	Lease	Sq Ft	Term Comm	Term Exp	Move In / Vacate	Last Increase	Next Increase	Escalation	Other	Monthly	Type	Date	Through	Area	Rent Per SF
B600	Fox Meadows Software, LTD		3,264	03/01/2006	03/01/2006	9/30/2009	4,169.76	106.27			4,276.03					
B600	230886	38851		2,544.75	8,552.43		15.33	0.39			15.72					
												BRNT				
													3/1/2006	09/30/2006	4,017.44	M 14.77
													3/1/2006	03/31/2006	-1,376.16	M -5.06
													10/1/2006	09/30/2007	4,093.60	M 15.05
													10/1/2007	09/30/2008	4,169.76	M 15.33
													10/1/2008	09/30/2009	4,248.64	M 15.62
												CAME				
													1/1/2007	12/31/2007	106.27	M 0.39
B700	United States Of America		2,242	09/01/2004	09/01/2004	8/31/2009	3,129.45				3,129.45					
B700	501397	501397			6,258.90		16.75				16.75					
												BRNT				
													9/1/2004	08/31/2009	3,129.45	M 16.75
B800	Vacant		3,971													
B800																
TOTALS:	Building Square Feet:		73,548				83,066.67	2,294.11	0.00	5,235.07	90,595.85					
	Occupied Square Feet:		68,746													
	Vacant Square Feet:		4,802													
	Occupancy Percent:		93.47%		*Missing Square Feet:*		0									

Building: 21331
Sqft: 58,829
Division: CHR

FONTAINE III

All Billing

Suite	Tenant	Lease	Sq Ft	Lease Begin	Move-In	Rent Begin	Rent Exp	Base Rent	Expense Recoveries	Other	Monthly Total	Rent Changes Code	Begin Date	End Date	Amount	Freq	Per SF
100	Allen Kopel & Associates, PLLC		2,864	07/01/2005	07/01/2005	11/30/2010		3,670.69	129.59		3,800.28						
100	240347	53196				3,929.87		15.38	0.54		15.92						
												BRNT					
													7/1/2005	11/30/2006	3,580.00	M	15.00
													12/1/2006	11/30/2007	3,670.69	M	15.38
													12/1/2007	11/30/2008	3,761.39	M	15.76
													12/1/2008	11/30/2009	3,854.47	M	16.15
													12/1/2009	11/30/2010	3,949.93	M	16.55
												CAME					
													1/1/2007	12/31/2007	129.59	M	0.54
												CONC					
													7/1/2005	11/30/2005	-3,580.00	M	-15.00
105	Vacant		2,988														
105																	
110	Xerox		1,395	01/01/2005	01/01/2005	12/31/2009		1,285.72	140.65	668.44	2,094.81						
110	501401	501401						11.06	1.21	5.75	18.02						
												BRNT					
													1/1/2005	12/31/2005	1,191.56	M	10.25
													1/1/2006	12/31/2006	1,238.06	M	10.65
													1/1/2007	12/31/2007	1,285.72	M	11.06
													1/1/2008	12/31/2008	1,334.55	M	11.48
													1/1/2009	12/31/2009	1,384.54	M	11.91
												CAME					
													1/1/2007	12/31/2007	140.65	M	1.21
												OPXE					
													1/1/2005	12/31/2009	668.44	M	5.75
115	TBE Group, Inc.		2,216	06/01/2005	06/01/2005	8/31/2010		2,862.33	100.35		2,962.68						
105	239614	52193		2,677.67		498.29		15.50	0.54		16.04						
												BRNT					
													6/1/2005	08/31/2006	2,677.67	M	14.50
													9/1/2006	08/31/2007	2,770.00	M	15.00
													9/1/2007	08/31/2008	2,862.33	M	15.50
													9/1/2008	08/31/2009	2,954.67	M	16.00
													9/1/2009	08/31/2010	3,047.00	M	16.50
												CAME					
													1/1/2007	12/31/2007	100.35	M	0.54
												CONC					
													6/1/2005	08/31/2005	-2,677.67	M	-14.50
120	South Carolina- RSIC		4,750	04/24/2007	04/24/2007	4/30/2014		4,484.79			4,484.79						
120	247084	63925				4,484.79		11.33			11.33						
												BRNT					

Building: 21331
Sqft: 58,829
Division: CHR

FONTAINE III

All Billing

Suite	Tenant	Square Feet	Move In Date	Lease Start	Lease Exp	Term	Vacant	Monthly Rent	Rent/SF	Type	Begin Date	End Date	Amount	Prorate	SF
											3/1/2007	03/31/2007	-4,484.79	M	-11.33
											4/24/2007	04/30/2007	4,484.79	M	11.33
											5/1/2007	04/30/2008	4,484.79	M	11.33
											5/1/2008	04/30/2009	5,470.42	M	13.82
											5/1/2009	04/30/2010	6,297.71	M	15.91
											5/1/2010	04/30/2011	6,487.71	M	16.39
											5/1/2011	04/30/2012	6,681.67	M	16.88
											5/1/2012	04/30/2013	6,883.54	M	17.39
											5/1/2013	04/30/2014	7,089.38	M	17.91
125	Citistreet, LLC		3,258	11/01/2007	11/01/2007	12/31/2012	4,887.00	4,887.00							
125	226470	30752			4,276.08		18.00	18.00							
										BRNT					
											11/1/2007	10/31/2008	4,887.00	M	18.00
											11/1/2008	10/31/2009	4,962.03	M	18.35
											11/1/2009	10/31/2010	5,077.05	M	18.70
											11/1/2010	10/31/2011	5,172.08	M	19.05
											11/1/2011	10/31/2012	5,267.10	M	19.40
											11/1/2012	12/31/2012	5,362.13	M	19.75
200	Aetna Life Insurance Co,		20,679	02/12/2007	02/12/2007	2/29/2012	24,987.12	24,987.12							
200	247097	63950			198.00		14.50	14.50							
										BRNT					
											2/12/2007	02/28/2007	24,987.12	M	14.50
											3/1/2007	02/29/2008	24,987.12	M	14.50
											3/1/2008	02/28/2009	25,745.35	M	14.94
											3/1/2009	02/28/2010	26,520.82	M	15.39
											3/1/2010	02/28/2011	27,313.51	M	15.85
											3/1/2011	02/29/2012	28,140.67	M	16.33
										MRNT					
											1/18/2007	02/28/2007	-24,987.12	M	-14.50
											1/18/2007	02/28/2007	24,987.12	M	14.50
											1/18/2007	02/11/2007	24,987.12	M	14.50
											1/18/2007	02/11/2007	-24,987.12	M	-14.50
300	Vacant		12,494												
300															
350	Vacant		8,185												
350															

FBPAPP-0467

Rent Roll By Property Mgr as of 11/01/2007

FONTAINE III

Building: 21331
Sqft: 58,829
Division: CHR

All Billing

Suite	Tenant	Lease Type	Lease Term	Lease Begin	Lease End	Rentable Square Feet	Base Rent	Expense Recovery	Parking	Other	Total Monthly Rent	Rate Change Date	Rate Change Amount
TOTALS:	Building Square Feet:	58,829				42,177.65	370.59	0.00	668.44	43,216.68			
	Occupied Square Feet:	35,162											
	Vacant Square Feet:	23,667											
	Occupancy Percent:	59.77%	*Missing Square Feet:*			*0*							

FBPAPP-0468

Rent Roll By Property Mgr as of 11/01/2007

FONTAINE III

Building: 21331
Sqft: 58,829
Division: CHR

Future Leases

Suite	Tenant	Party	Space Number	Version	Rent Date	Expire	Move In	Move Out
125	Citistreet, LLC	30752	3258	2	11/01/2007	12/31/2012	11/01/2007	

FBPAPP-0469

Highwoods PROPERTIES

Rent Roll By Property Mgr as of 11/01/2007

FONTAINE V

Date: 11/1/2007

Building: 21341
Sqft: 21,107
Division: CHR

All Billing

Suite	Tenant	Lease	Sq Ft	Lease Beg	Lease End	Move In	Move Out	Base Rent PSF	Expense Recov PSF	Parking Rent PSF	Other Rent PSF	Total Rent PSF	Total Rent	Charge Code	Begin Date	End Date	Amount	Short Period
100	Ometric Corporation		21,107	03/22/2006	03/22/2006	9/30/2008		15,830.25	6,950.00				22,780.25					
100	243393	57226				22,780.25		9.00	3.95				12.95					
														BRNT				
															9/1/2006	09/30/2008	15,830.25	M 9.00
														CAME				
															1/1/2007	07/31/2007	-9,700.00	M -5.51
															1/1/2007	12/31/2007	6,950.00	M 3.95
														MRNT				
															3/22/2006	03/31/2006	15,830.25	M 9.00
															3/22/2006	03/31/2006	-15,830.25	M -9.00

TOTALS:	Building Square Feet:	21,107		15,830.25	6,950.00	0.00	0.00	22,780.25
	Occupied Square Feet:	21,107						
	Vacant Square Feet:	0						
	Occupancy Percent:	100.00%	*Missing Square Feet:*	*0*				