

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

COMMISSION FILE NUMBER: 1-11718

MANUFACTURED HOME COMMUNITIES, INC.  
(Exact name of registrant as specified in its charter)

MARYLAND  
(State or other jurisdiction of  
incorporation or organization)

36-3857664  
(I.R.S. Employer  
Identification No.)

TWO NORTH RIVERSIDE PLAZA SUITE  
800, CHICAGO, ILLINOIS  
(Address of principal executive offices)

60606  
(Zip Code)

(312) 279-1400  
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Common Stock, \$.01 Par Value  
(Title of Class)

The New York Stock Exchange  
(Name of exchange on which registered)

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: NONE

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of voting stock held by nonaffiliates was approximately \$640.1 million as of February 11, 2002 based upon the closing price of \$32.55 on such date using beneficial ownership of stock rules adopted pursuant to Section 13 of the Securities Exchange Act of 1934 to exclude voting stock owned by Directors and Officers, some of whom may not be held to be affiliates upon judicial determination.

At March 15, 2002, 21,740,248 shares of the Registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE:

Part III incorporates by reference the Registrant's Proxy Statement relating to the Annual Meeting of Stockholders to be May 8, 2002.

MANUFACTURED HOME COMMUNITIES, INC.  
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## PART I

### ITEM 1. BUSINESS

#### THE COMPANY

##### GENERAL

Manufactured Home Communities, Inc. (together with its consolidated subsidiaries, the "Company") is a fully integrated company which owns and operates manufactured home communities ("Communities"). Communities are residential developments designed and improved for the placement of detached, single-family manufactured homes which are produced off-site and installed and set on residential sites ("Site Set") within the Community. The owner of each home leases the site on which it is located. Modern Communities are similar to typical residential subdivisions, containing centralized entrances, paved streets, curbs and gutters and parkways. In addition, these Communities often provide a clubhouse for social activities and recreation and other amenities, which may include swimming pools, shuffleboard courts, tennis courts, laundry facilities and cable television service. In some cases, utilities are provided or arranged for by the owner of the Community, otherwise, the resident contracts the utility directly. Some Communities provide water and sewer service through municipal or regulated utilities, while others provide these services to residents from on-site facilities.

Each Community is generally designed to attract, and is marketed to one of two types of residents -- (1) retirees and empty nesters or (2) families and first-time homeowners. The Company believes both types of Communities are attractive investments and focuses on owning Communities in or near large metropolitan markets and retirement destinations.

The Company was formed to continue the property operations, business objectives and acquisition strategies of an entity that had owned and operated Communities since 1969. As of December 31, 2001, the Company owned or had an ownership interest in a portfolio of 148 Communities and recreational vehicle ("RV") resorts (the "Properties") located throughout the United States containing 50,761 residential sites. The Properties are located in 23 states (with the number of Properties in each state shown parenthetically) -- Florida (49), California (25), Arizona (17), Michigan (11), Colorado (10), Delaware (7), Nevada (5), Indiana (3), Oregon (3), Illinois (2), Iowa (2), New York (2), Utah (2), Pennsylvania (1), Maryland (1), Minnesota (1), Montana (1), New Mexico (1), Ohio (1), Texas (1), Virginia (1), West Virginia (1), and Washington (1). As of December 31, 2001, the Company also owned a commercial building located in California.

The Company has approximately 800 full-time employees dedicated to carrying out the Company's operating philosophy and strategies of value enhancement and service to residents. The Company typically utilizes a one or two-person management team for the on-site management of each of the Properties. Typically, clerical and maintenance workers are employed to assist these individuals in the management and care of the Properties. Direct supervision of on-site management is the responsibility of the Company's regional vice presidents and regional and district managers. These individuals have significant experience in addressing the needs of residents and in finding or creating innovative approaches to maximize value and increase cash flow from property operations. Complementing this field management staff are approximately 60 corporate employees who assist on-site management in all property functions.

##### FORMATION OF THE COMPANY

The Company, formed in March 1993, is a Maryland corporation which has elected to be taxed as a real estate investment trust ("REIT"). The Company generally will not be subject to Federal income tax to the extent it distributes its REIT taxable income to its stockholders. REITs are subject to a number of organizational and operational requirements. If the Company fails to qualify as a REIT, its income is taxable at regular corporate rates. Even if the Company qualifies for taxation as a REIT, the Company is subject to certain state and local taxes on its income and property and Federal income and excise taxes on its undistributed income.

The operations of the Company are conducted through certain entities which are owned or controlled by the Company. MHC Operating Limited Partnership (the "Operating Partnership") is the entity through which the Company conducts substantially all of its operations. Subsidiaries of the Operating Partnership have been created to: (i) facilitate mortgage financing (the "Financing Partnerships"); (ii) facilitate the Company's ability to provide financing to the owners of Communities ("Lending Partnership"); and (iii) own the assets and operations of certain utility companies which service the Properties ("MHC Systems"). The financial results of the Operating Partnership and subsidiaries (together, the "Subsidiaries") are consolidated in the Company's consolidated financial statements. The operations of the Company are managed on a property-by-property basis therefor the results of our financing, lending and property management and utility operations are not reviewed separately by

management to make decisions regarding allocation of resources or to assess performance.

In addition, since certain activities, if performed by the Company, may not have been qualifying REIT activities under the Internal Revenue Code of 1986, as amended (the "Code"), the Company has invested in the non-voting preferred stock of various corporations which engage in such activities. Realty Systems, Inc. ("RSI") is a preferred stock subsidiary of the Company that, doing business as Carefree Sales, is engaged in the business of purchasing, selling, leasing and financing manufactured homes that are located or will be located in Properties owned and managed by the Company. Carefree Sales also provides brokerage services to residents at such Properties. Typically, residents move from a Community but do not relocate their homes. Carefree Sales may provide brokerage services, in competition with other local brokers, by seeking buyers for the homes. Carefree Sales also leases homes to prospective residents with the expectation that the tenant eventually will purchase the home. LP Management Corp. leases from the Operating Partnership certain real property within or adjacent to certain of the Properties consisting of golf courses, pro shops, restaurants and RV areas. The Company believes that the activities of RSI and LP Management Corp. (collectively, "Affiliates") benefit the Company by maintaining and enhancing occupancy at the Properties. The Company accounts for its investment in and advances to Affiliates using the equity method of accounting.

#### BUSINESS OBJECTIVES AND OPERATING STRATEGIES

The Company seeks to maximize both current income and long-term growth in income. The Company focuses on Communities that have strong cash flow and expects to hold such Properties for long-term investment and capital appreciation. In determining cash flow potential, the Company evaluates the Community's ability to attract and retain high quality residents who take pride in their Community and in their home. These business objectives and their implementation are determined by the Company's Board of Directors and may be changed at any time. The Company's investment and operating approach includes:

- Providing consistently high levels of services and amenities in attractive surroundings to foster a strong sense of community and pride of home ownership;
- Efficiently managing the Properties to increase operating margins by controlling expenses, increasing occupancy and maintaining competitive market rents;
- Increasing income and property values by continuing the strategic expansion and, where appropriate, renovation of the Properties;
- Utilizing management information systems to evaluate potential acquisitions, identify and track competing properties and monitor resident satisfaction; and
- Selectively acquiring Communities that have potential for long-term cash flow growth and to create property concentrations in and around major metropolitan areas and retirement destinations to capitalize on operating synergies and incremental efficiencies.

The Company is committed to enhancing its reputation as the most respected brand name in the industry. Its strategy is to own and operate the highest quality Communities in major metropolitan areas and retirement destinations across the United States. The focus is on creating an attractive residential environment for homeowners by providing a well-maintained, comfortable Community with a variety of organized recreational and social activities and superior amenities. In addition, the Company regularly surveys rental rates of competing properties and conducts satisfaction surveys of residents to determine the factors residents consider most important in choosing a manufactured home community.

#### FUTURE ACQUISITIONS

The Company acquired or gained a controlling interest in eighty-eight Properties during 1997 through 1999, more than doubling its portfolio. The Company believes that opportunities for property acquisitions are still available and in general consolidation within the industry will continue (see -- The Industry -- Industry Consolidation). However, the Company believes that transactions occurring during 1999 and 2000 in the private marketplace are at valuations significantly in excess of the Company's current public market valuation. As a result, during 1999 and 2000 the Company accelerated its stock repurchase program. The Company's Board of Directors continues to review the conditions under which the Company will repurchase its stock. These conditions include, but are not limited to, market price, balance sheet flexibility, other opportunities and capital requirements. (For more information on the Company's stock repurchase program see Note 4 to the accompanying financial

statements.) Increasing acceptability of and demand for Site Set homes and continued constraints on development of new Communities continue to add to their attractiveness as an investment. The Company believes it has a competitive advantage in the acquisition of new Communities due to its experienced management, significant presence in major real estate markets and substantial capital resources. The Company is actively seeking to acquire additional Communities and currently is engaged in various stages of negotiations relating to the possible acquisition of a number of Communities.

The Company anticipates that newly acquired properties will be located in the United States. The Company utilizes market information systems to identify and evaluate acquisition opportunities, including a market database to review the primary economic indicators of the various locations in which the Company expects to expand its operations. Acquisitions will be financed from the most appropriate sources of capital, which may include undistributed funds from operations, issuance of additional equity securities, sales of investments, collateralized and uncollateralized borrowings and issuance of debt securities. In addition, the Company may cause the Operating Partnership to issue units of limited partnership interest ("OP Units") to finance acquisitions. The Company believes that an ownership structure which includes the Operating Partnership will permit the Company to acquire additional Communities in transactions that may defer all or a portion of the sellers' tax consequences.

When evaluating potential acquisitions, the Company will consider such factors as: (i) the replacement cost of the property; (ii) the geographic area and type of property; (iii) the location, construction quality, condition and design of the property; (iv) the current and projected cash flow of the property and the ability to increase cash flow; (v) the potential for capital appreciation of the property; (vi) the terms of tenant leases, including the potential for rent increases; (vii) the potential for economic growth and the tax and regulatory environment of the community in which the property is located; (viii) the potential for expansion of the physical layout of the property and the number of sites; (ix) the occupancy and demand by residents for properties of a similar type in the vicinity and the residents profile; (x) the prospects for liquidity through sale, financing or refinancing of the property; and (xi) competition from existing Communities and the potential for the construction of new Communities in the area. The Company expects to purchase Communities with physical and market characteristics similar to the Properties in its current portfolio.

#### PROPERTY EXPANSIONS

Several of the Company's Properties have available land for expanding the number of sites available to be leased to residents. Development of these sites ("Expansion Sites") is predicated by local market conditions and permitted by zoning and other applicable laws. When justified, development of Expansion Sites allows the Company to leverage existing facilities and amenities to increase the income generated from the Properties. Where appropriate, facilities and amenities may be upgraded or added to certain Properties in order to make those Properties more attractive in their markets. The Company's acquisition philosophy has included the desire to own Properties with potential Expansion Site development, and the Company has been successful in acquiring a number of such Properties. Several examples of these Properties include the 1994 acquisition of Bulow Village with potential development of approximately 725 Expansion Sites, the 1997 acquisition of Golf Vista Estates with potential development of approximately 128 Expansion Sites and the acquisition in 1999 of Coquina Crossing with potential development of approximately 393 Expansion Sites, and the acquisition in 2001 of Grand Island and The Lakes at Countrywood with combined potential Expansion Sites of 224 sites.

Of the Company's 148 Properties, ten may be expanded consistent with existing zoning regulations. In 2002, the Company expects to develop an additional 141 Expansion Sites within three of these Properties. As of December 31, 2001, the Company had approximately 817 Expansion Sites available for occupancy in 24 of the Properties. The Company filled 205 Expansion Sites in 2001 and expects to fill an additional 200 to 250 Expansion Sites in 2002.

#### LEASES

The typical lease entered into between the resident and the Company for the rental of a site is for a month-to-month or year-to-year term, renewable upon the consent of both parties or, in some instances, as provided by statute. These leases are cancelable, depending on applicable law, for non-payment of rent, violation of community rules and regulations or other specified defaults. Non-cancelable long-term leases, with remaining terms ranging up to ten years, are in effect at certain sites within 22 of the Properties. These leases are subject to rental rate increases based on the Consumer Price Index ("CPI"), in some instances taking into consideration certain floors and ceilings and allowing for pass-throughs of certain items such as real estate taxes, utility expenses and capital expenditures. Generally, market rate adjustments are made on an annual basis.



## REGULATIONS AND INSURANCE

General. Communities are subject to various laws, ordinances and regulations, including regulations relating to recreational facilities such as swimming pools, clubhouses and other common areas. The Company believes that each Property has the necessary permits and approvals to operate.

Rent Control Legislation. State and local rent control laws, principally in California and Florida, limit the Company's ability to increase rents and to recover increases in operating expenses and the costs of capital improvements at certain Properties. Enactment of such laws has been considered from time to time in other jurisdictions. The Company presently expects to continue to maintain Communities, and may purchase additional properties, in markets that are either subject to rent control or in which rent-limiting legislation exists or may be enacted. For example, Florida has enacted a law that generally provides that rental increases must be reasonable. Also, certain jurisdictions in California in which the Company owns Properties limit rent increases to changes in the CPI or some percentage thereof.

Insurance. Management believes that the Properties are covered by adequate fire, flood, property, earthquake and business interruption insurance (where appropriate) provided by reputable companies and with commercially reasonable deductibles and limits. Due to the lack of available commercially reasonable coverage, the company is self-insured for terrorist incidents. The Company believes its insurance coverage is adequate based on the Company's assessment of the risks to be insured, the probability of loss and the relative cost of available coverage. The Company has obtained title insurance insuring fee title to the Properties in an aggregate amount which the Company believes to be adequate.

## INDUSTRY

### THE INDUSTRY

The Company believes that modern Communities, such as the Properties, provide an opportunity for increased cash flows and appreciation in value. These may be achieved through increases in occupancy rates and rents, as well as expense controls, expansion of existing Properties and opportunistic acquisitions, for the following industry specific reasons:

- Barriers to Entry: The Company believes that the supply of new Communities will be constrained due to barriers to entry into the industry. The most significant barrier has been the difficulty in securing zoning from local authorities. This has been the result of (i) the public's historically poor perception of the industry, and (ii) the fact that Communities generate less tax revenue because the homes are treated as personal property (a benefit to the home owner) rather than real property. Another factor that creates substantial barriers to entry is the length of time between investment in the Community's development and the attainment of stabilized occupancy and the generation of revenues. The initial development of the infrastructure may take up to two or three years. Once the Community is ready for occupancy, it may be difficult to attract residents to an empty Community. Substantial occupancy levels may take several years to achieve.
- Industry Consolidation: According to an industry analyst's industry report, there are approximately 50,000 Communities in the United States, and approximately 6.5% or 3,250 of the Communities have more than 200 sites and would be considered "investment-grade" properties. The five public REITs that own Communities own approximately 532 or about 16% of the "investment-grade" Communities. In addition, based on a report prepared by one analyst, the top 150 owners of Communities own approximately 69% of the "investment-grade" assets. The Company believes that this relatively high degree of fragmentation in the industry provides the Company, as a national organization with experienced management and substantial financial resources, the opportunity to purchase additional Communities.
- Stable Tenant Base: The Company believes that Communities tend to achieve and maintain a stable rate of occupancy due to the following factors: (i) residents own their own homes, (ii) Communities tend to foster a sense of community as a result of amenities such as clubhouses, recreational and social activities and (iii) since moving a Site Set home from one Community to another involves substantial cost and effort, residents often sell their home in-place (similar to site-built residential housing) with no interruption of rental payments.





## SITE SET HOUSING

Based on the current growth in the number of individuals living in Site Set homes, the Company believes that Site Set homes are increasingly viewed by the public as an attractive and economical form of housing. According to the industry's trade association, nearly one in four new single family homes sold in the United States today is Site set.

The Company believes that the growing popularity of Site Set housing is primarily the result of the following factors:

- Importance of Home Ownership. According to the Fannie Mae ("FNMA") 2000 National Housing Survey renters' desire to own a home continues to be a top priority. According to the report, "A home is more than merely shelter. Owning a home provides a sense of financial security...Americans view owning a home as the second most important action a person can take to achieve financial security, behind stating an IRA [401(k)] or other type of retirement account.
- Affordability. For a significant number of persons, Site Set housing represents the only means of achieving home ownership. In addition, the total cost of housing in a Community (home cost, site rent and related occupancy costs) is competitive with and often lower than the total cost of alternative housing, such as apartments and condominiums, and generally substantially lower than "stick-built" residential alternatives.
- Lifestyle Choice. As the average age of the United States population has increased, Site Set housing has become an increasingly popular housing alternative for retirement and "empty-nest" living. According to FNMA, the surviving baby-boom generation -- the 80 million people born between 1945 and 1964 -- will constitute 18% of the U.S. population within the next 30 years and more than 32 million will reach age 55 within the next ten years. Among those people who are nearing retirement (age 40 to 54), approximately 33% plan on moving upon retirement. The Company believes that Site Set housing is especially attractive to such individuals when located within a Community that offers an appealing amenity package, close proximity to local services, social activities, low maintenance and a secure environment.
- Construction Quality. Since 1976, all Site Set housing has been required to meet stringent Federal standards, resulting in significant increases in the quality of the industry's product. The Department of Housing and Urban Development's standards for Site Set housing construction quality are the only Federally regulated standards governing housing quality of any type in the United States. Site Set homes produced since 1976 have received a "red and silver" government seal certifying that they were built in compliance with the Federal code. The code regulates Site Set home design and construction, strength and durability, fire resistance and energy efficiency, and the installation and performance of heating, plumbing, air conditioning, thermal and electrical systems. In newer homes, top grade lumber and dry wall materials are common. Also, manufacturers are required to follow the same fire codes as builders of site-built structures.
- Comparability to Site-Built Homes. The Site Set housing industry has experienced a recent trend towards multi-section homes. Many modern Site Set homes are longer (up to 80 feet compared to 50 feet in the 1960's) and wider than earlier models. Many homes have vaulted ceilings, fireplaces and as many as four bedrooms, and closely resemble single family ranch style site-built homes.

## ITEM 2. PROPERTIES

The Company believes that the Properties provide attractive amenities and common facilities that create a comfortable and attractive Community for the residents, with most offering a clubhouse, a swimming pool, laundry facilities and cable television service. Many also offer additional amenities such as sauna/whirlpool spas, golf courses, tennis, shuffleboard and basketball courts and exercise rooms. Since residents own their homes, it is their responsibility to maintain their homes and the surrounding area. It is management's role to ensure that residents comply with Community policies and to provide maintenance of the common areas, facilities and amenities. The Company holds periodic meetings of its property management personnel for training and implementation of the Company's strategies. The Properties historically have had, and the Company believes they will continue to have, low turnover and high occupancy rates.

The distribution of the Properties throughout the United States reflects the Company's belief that geographic diversification helps insulate the portfolio from regional economic influences. The Company intends to target new acquisitions in or near markets where the Properties are located and will also consider acquisitions of properties outside such markets. The Company's five largest markets of Properties owned are Florida (49 Properties), California (25 Properties), Arizona (17 Properties), Michigan (11 Properties) and Colorado (10 Properties). These markets accounted for 36%, 17%, 9%, 3%, and 10%, respectively, of the Company's total revenues for the year ended December 31, 2001. The Company also has Properties located in the following markets: Northeast, Northwest, Midwest, and Nevada/Utah/New Mexico. The Company's largest Property, Bay Indies, located in Venice, Florida, accounted for 3% of the Company's total revenues for the year ended December 31, 2001.

The following tables set forth certain information relating to the Properties owned by the Company as of December 31, 2001, categorized by the Company's major markets. "Core Portfolio" represents an analysis of Properties owned throughout both years of comparison. The table excludes the following RV resort Properties (2,687 sites) at which rents and occupancy vary based on seasonality: Sherwood Forest RV (Kissimmee, Florida); Southern Palms (Eustis, Florida); and Fun & Sun (San Benito, Texas). The table excludes five Properties (1,521 sites) in which the Company has a non-controlling joint venture interest and accounts for using the equity method of accounting.

NUMBER  
 MONTHLY  
 MONTHLY OF  
 SITES  
 OCCUPANCY  
 OCCUPANCY  
 BASE RENT  
 BASE RENT  
 LOCATION AS  
 OF AS OF AS  
 OF AS OF AS  
 OF PROPERTY  
 CITY, STATE  
 12/31/01  
 12/31/01  
 12/31/00  
 12/31/01  
 12/31/00 ---  
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 FLORIDA  
 NORTHERN,  
 CENTRAL &  
 EASTERN  
 FLORIDA:  
 Maralago Cay  
 Lantana FL  
 602 96.3%  
 95.7% \$417  
 \$405  
 Brittany  
 Estates  
 Tallahassee  
 FL 299 84.6%  
 93.6% \$285  
 \$270 Bulow  
 Plantation  
 Flagler  
 Beach FL 276  
 99.4%(b)  
 97.8%(b)  
 \$258 \$244  
 Carriage  
 Cove Daytona  
 Beach FL 418  
 97.4% 98.3%  
 \$399 \$370  
 Coquina  
 Crossing St  
 Augustine FL  
 361 91.1%(b)  
 86.8%(b)  
 \$317 \$305  
 Coral Cay  
 Margate FL  
 819 93.4%  
 96.3% \$428  
 \$411  
 Countryside  
 North Vero  
 Beach FL 646  
 95.7%(b)  
 95.5%(b)  
 \$315 \$298  
 Fernwood  
 Deland FL 92  
 94.6% 95.7%  
 \$260 \$250

Grand Island  
Grand Island  
FL(a) 309  
76.4% \$282  
Heritage  
Village Vero  
Beach FL 436  
97.0% 97.2%  
\$346 \$308  
Holiday  
Village, FL  
Vero Beach  
FL 128 78.1%  
79.7% \$286  
\$281 Indian  
Oaks  
Rockledge FL  
211 96.2%(b)  
94.8%(b)  
\$243 \$234  
Lakewood  
Village  
Melbourne FL  
349 95.1%  
95.7% \$359  
\$345 Mid-  
Florida  
Lakes  
Leesburg FL  
1,226 91.1%  
(b) 93.2%(b)  
\$325 \$313  
Oak Bend  
Ocala FL 262  
87.4%(b)  
84.4%(b)  
\$250 \$239  
Pickwick  
Port Orange  
FL 432 97.2%  
94.9% \$310  
\$296  
Sherwood  
Forest  
Kissimmee FL  
769 96.6%(b)  
94.7%(b)  
\$334 \$319  
Spanish Oaks  
Ocala FL 459  
93.9% 93.7%  
\$301 \$281  
The Landings  
Port Orange  
FL 433 88.9%  
(b) 89.4%(b)  
\$308 \$293  
The Meadows,  
FL Palm  
Beach  
Gardens FL  
380 82.6%(b)  
81.1%(b)  
\$331 \$314  
TAMPA/NAPLES:  
Bay Indies  
Venice FL  
1,309 98.9%  
99.9% \$323  
\$314 Bay  
Lake Estates  
Nokomis FL  
228 96.1%  
98.2% \$370  
\$354  
Boulevard  
Estates  
Clearwater  
FL 297 89.2%  
89.6% \$349  
\$333  
Buccaneer N.  
Ft. Myers FL  
971 99.1%  
99.3% \$331  
\$317 Chalet

Village  
Tampa FL 60  
90.0% 90.0%  
\$327 \$309  
Country  
Place New  
Port Richey  
FL 515 97.9%  
(b) 90.9%(b)  
\$237 \$230  
Down Yonder  
Largo FL 361  
99.4% 98.9%  
\$375 \$356  
East Bay  
Oaks Largo  
FL 328 97.3%  
97.0% \$367  
\$351  
Eldorado  
Village  
Largo FL 227  
96.0% 96.9%  
\$370 \$356  
Friendly  
Village of  
Kapok  
Clearwater  
FL 236 84.3%  
84.7% \$349  
\$341  
Hillcrest  
Clearwater  
FL 279 84.2%  
80.3% \$345  
\$322 Holiday  
Ranch Largo  
FL 150 92.7%  
94.0% \$341  
\$333 Lake  
Fairways N.  
Ft. Myers FL  
896 99.1%  
99.4% \$364  
\$348 Lake  
Haven  
Dunedin FL  
379 92.9%  
97.6% \$382  
\$376 Lakes  
at  
Countrywood  
Plant City  
FL(a) 421  
96.5% \$246  
Meadows at  
Countrywood  
Plant City  
FL 736 98.9%  
98.8% \$285  
\$277 Oaks at  
Countrywood  
Plant City  
FL 168 67.9%  
(b) 64.9%(b)  
\$248 \$231  
Pine Lakes  
N. Ft. Myers  
FL 584 99.1%  
99.8% \$439  
\$421  
Satellite  
Clearwater  
FL 87 90.8%  
90.8% \$302  
\$292 The  
Heritage N.  
Ft. Myers FL  
455 83.5%(b)  
79.6%(b)  
\$306 \$290  
Windmill  
Manor  
Bradenton FL  
292 95.9%  
96.2% \$357

\$340(d)  
 Windmill  
 Village --  
 Ft. Myers N.  
 Ft. Myers FL  
 491 98.0%  
 98.6% \$310  
 \$297  
 Windmill  
 Village  
 North  
 Sarasota FL  
 471 98.5%  
 99.8% \$332  
 \$320  
 Windmill  
 Village  
 South  
 Sarasota FL  
 306 99.3%  
 100.0% \$332  
 \$321 -----  
 -----  
 -----  
 TOTAL  
 FLORIDA  
 MARKET  
 19,154 94.3%  
 94.7% \$333  
 \$323 -----  
 -----  
 -----  
 FLORIDA  
 MARKET --  
 CORE  
 PORTFOLIO  
 18,424 94.6%  
 95.1% \$336  
 \$323 -----  
 -----  
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NUMBER  
MONTHLY  
MONTHLY OF  
SITES  
OCCUPANCY  
OCCUPANCY  
BASE RENT  
BASE RENT  
LOCATION  
AS OF AS  
OF AS OF  
AS OF AS  
OF  
PROPERTY  
CITY,  
STATE  
12/31/01  
12/31/01  
12/31/00  
12/31/01  
12/31/00 -

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CALIFORNIA  
NORTHERN  
CALIFORNIA:  
California  
Hawaiian  
San Jose  
CA 419  
98.1%(b)  
98.1%(b)  
\$636 \$600  
Colony  
Park Ceres  
CA 186  
86.0%  
76.9% \$353  
\$345  
Concord  
Cascade  
Pacheco CA  
283 98.9%  
98.9% \$544  
\$521  
Contempo  
Marin San  
Rafael CA  
396 98.7%  
98.7% \$644  
\$631  
Coralwood  
Modesto CA  
194 97.4%  
92.8% \$413  
\$403 Four  
Seasons  
Fresno CA  
242 73.6%  
71.5% \$254  
\$244  
Laguna  
Lake San  
Luis  
Obispo CA  
290 99.7%  
99.7% \$344  
\$328 Monte  
del Lago  
Castroville  
CA 314  
97.8%(b)  
99.4%(b)  
\$513 \$485  
Quail  
Meadows  
Riverbank





95.4%  
95.2% \$538  
\$516 -----  
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CALIFORNIA  
MARKET --  
CORE  
PORTFOLIO  
5,702  
95.4%  
95.2% \$538  
\$516 -----  
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ARIZONA  
Apollo  
Village  
Phoenix AZ  
237 91.6%  
(b) 92.8%  
(b) \$371  
\$356  
Brentwood  
Manor Mesa  
AZ 274  
93.8%  
94.9% \$456  
\$431  
Carefree  
Manor  
Phoenix AZ  
128 97.7%  
99.2% \$322  
\$303 Casa  
del Sol #1  
Peoria AZ  
246 86.6%  
94.7% \$422  
\$407 Casa  
del Sol #2  
Glendale  
AZ 239  
94.1%  
97.9% \$455  
\$438 Casa  
del Sol #3  
Glendale  
AZ 238  
94.1%  
96.2% \$439  
\$420  
Central  
Park  
Phoenix AZ  
293 95.2%  
96.9% \$386  
\$373  
Desert  
Skies  
Phoenix AZ  
164 97.6%  
97.0% \$317  
\$293  
Fairview  
Manor  
Tucson AZ  
235 91.1%  
92.8% \$326  
\$311  
Hacienda  
de  
Valencia  
Mesa AZ  
365 85.2%  
94.2% \$377  
\$361 Palm  
Shadows  
Glendale  
AZ 294  
90.8%  
94.9% \$355  
\$336  
Sedona

Shadows  
 Sedona AZ  
 198 91.4%  
 88.0% \$327  
 \$306  
 Sunrise  
 Heights  
 Phoenix AZ  
 199 90.5%  
 95.5% \$358  
 \$347 The  
 Mark Mesa  
 AZ 410  
 91.7%  
 95.9% \$383  
 \$361 The  
 Meadows  
 Tempe AZ  
 391 92.3%  
 98.0% \$439  
 \$416  
 Whispering  
 Palms  
 Phoenix AZ  
 116 94.8%  
 99.1% \$282  
 \$267 -----  
 -----  
 -----  
 ----- TOTAL  
 ARIZONA  
 MARKET  
 4,027  
 91.9%  
 95.4% \$385  
 \$367 -----  
 -----  
 -----  
 -----  
 ARIZONA  
 MARKET --  
 CORE  
 PORTFOLIO  
 4,027  
 91.9%  
 95.4% \$385  
 \$367 -----  
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TOTAL  
MICHIGAN  
MARKET 2,081  
93.4% 94.4%  
\$359 \$344 --  
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MICHIGAN  
MARKET --  
CORE  
PORTFOLIO  
2,081 93.4%  
94.4% \$359  
\$344 -----  
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-----  
COLORADO  
Bear Creek  
Sheridan CO  
124 97.6%  
100.0% \$409  
\$385  
Cimarron  
Broomfield  
CO 327 98.2%  
99.1% \$417  
\$391 Golden  
Terrace  
Golden CO  
265 98.6%  
99.2% \$464  
\$431 Golden  
Terrace  
South Golden  
CO 80 96.3%  
100.0% \$441  
\$407 Golden  
Terrace West  
Golden CO  
316 98.1%  
100.0% \$454  
\$424  
Hillcrest  
Village  
Aurora CO  
602 95.5%  
96.3% \$445  
\$422 Holiday  
Hills Denver  
CO 737 95.4%  
97.1% \$437  
\$412 Holiday  
Village Co.  
Springs CO  
240 96.7%  
96.3% \$427  
\$403 Pueblo  
Grande  
Pueblo CO  
252 96.8%  
96.8% \$281  
\$265  
Woodland  
Hills Denver  
CO 434 97.9%  
98.6% \$418  
\$390 -----  
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TOTAL  
COLORADO  
MARKET 3,377  
96.8% 97.9%  
\$424 \$399 --  
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COLORADO  
MARKET --  
CORE  
PORTFOLIO  
3,377 96.8%  
97.9% \$424

\$399 -----  
 -----  
 -----  
 NORTHEAST  
 Aspen  
 Meadows  
 Rehoboth DE  
 200 99.5%  
 100.0% \$262  
 \$250 Camelot  
 Meadows  
 Rehoboth DE  
 319 99.9%  
 100.0% \$265  
 \$252  
 Mariners  
 Cove  
 Millsboro DE  
 375 89.3%(b)  
 88.5%(b)  
 \$381 \$356  
 McNicol  
 Rehoboth DE  
 93 98.9%  
 97.8% \$258  
 \$248  
 Sweetbriar  
 Rehoboth DE  
 142 98.6%  
 100.0% \$199  
 \$187  
 Waterford  
 Estates Bear  
 DE 731 97.4%  
 (b) 96.9%(b)  
 \$398 \$379  
 Whispering  
 Pines Lewes  
 DE 393 95.2%  
 96.9% \$269  
 \$258  
 Pheasant  
 Ridge Mt.  
 Airy MD 101  
 97.0% 99.0%  
 \$453 \$424  
 Brook  
 Gardens  
 Lackawanna  
 NY 424 96.5%  
 97.2% \$435  
 \$423  
 Greenwood  
 Village  
 Manorville  
 NY 486 99.4%  
 (b) 97.3%(b)  
 \$389 \$366  
 Green Acres  
 Breinigsville  
 PA 595 96.1%  
 97.3% \$420  
 \$408 Meadows  
 of Chantilly  
 Chantilly VA  
 500 96.6%  
 92.0% \$512  
 \$493  
 Independence  
 Hill  
 Morgantown  
 WV 203 88.2%  
 90.1% \$214  
 \$204 -----  
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TOTAL  
 NORTHEAST  
 MARKET 4,562  
 96.3% 96.0%  
 \$372 \$355 --  
 -----  
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 -----  
 NORTHEAST  
 MARKET --

CORE  
PORTFOLIO  
4,562 96.3%  
96.0% \$372  
\$355 -----  
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NUMBER  
MONTHLY  
MONTHLY OF  
SITES  
OCCUPANCY  
OCCUPANCY  
BASE RENT  
BASE RENT  
LOCATION AS  
OF AS OF AS  
OF AS OF AS  
OF PROPERTY  
CITY, STATE  
12/31/01  
12/31/01  
12/31/00  
12/31/01  
12/31/00 --

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-- MIDWEST  
Five  
Seasons  
Cedar  
Rapids IA  
390 79.0%  
(b) 79.7%  
(b) \$253  
\$240

Holiday  
Village, IA  
Soux City  
IA 519  
80.5% 87.7%  
\$248 \$241

Golf Vista  
Estates  
Monee IL  
371 88.4%  
(b) 90.6%  
(b) \$387  
\$344 Willow

Lake  
Estates  
Elgin IL  
617 96.8%  
97.4% \$624  
\$583 Burns

Harbor  
Estates  
Chesterton  
IN 227  
83.7% 89.0%  
\$305 \$287

Oak Tree  
Village  
Portage IN  
379 90.0%  
93.1% \$302  
\$283

Windsong  
Indianapolis  
IN 268  
84.0% 91.4%  
\$292 \$277  
Camelot

Acres  
Burnsville  
MN 302  
99.8% 99.3%  
\$417 \$390  
Royal

Village  
Toledo OH  
233 90.1%  
89.3% \$319  
\$300 -----  
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-- TOTAL  
MIDWEST  
MARKET  
3,306 88.3%  
91.9% \$377  
\$350 -----  
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-- MIDWEST  
MARKET --  
CORE  
PORTFOLIO  
3,306 88.3%  
91.9% \$377  
\$350 -----  
-----

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-- NEVADA,  
UTAH, NEW  
MEXICO De1  
Rey  
Albuquerque  
NM 407  
84.5% 90.9%  
\$328 \$328  
Bonanza Las  
Vegas NV  
353 75.9%  
81.6% \$465  
\$465  
Boulder  
Cascade Las  
Vegas NV  
298 86.9%  
89.3% \$417  
\$394 Cabana  
Las Vegas  
NV 263  
97.3% 98.9%  
\$432 \$415  
Flamingo  
West Las  
Vegas NV  
258 84.1%  
(b) 80.2%  
(b) \$430  
\$406 Villa  
Borega Las  
Vegas NV  
293 91.1%  
95.9% \$421  
\$402(d) All  
Seasons  
Salt Lake  
City UT 121  
98.3% 97.5%  
\$328 \$315  
Westwood  
Village  
Farr West  
UT 314  
96.5%(b)  
95.2%(b)  
\$237 \$232 -  
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TOTAL  
NEVADA,  
UTAH, NEW  
MEXICO  
MARKET  
2,307 88.1%  
90.6% \$380  
\$369 -----  
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---  
-- NEVADA,  
UTAH, NEW  
MEXICO  
MARKET --  
CORE  
PORTFOLIO  
2,307 88.1%  
90.6% \$380

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$369 -----
- - - - -
- - - - -
--
NORTHWEST
  Casa
  Village
Billings MT
491 92.3%
98.0% $282
$272 Falcon
  Wood
  Village
  Eugene OR
183 98.9%
98.4% $363
$345 Quail
  Hollow
Fairview OR
137 97.8%
98.6% $442
$426
Shadowbrook
  Clackamas
  OR 156
98.7% 99.4%
$444 $429
  Kloshe
  Illahee
Federal Way
  WA 258
99.6% 99.2%
$478 $454 -
- - - - -
- - - - -
--
TOTAL
NORTHWEST
MARKET
1,225 96.3%
98.5% $376
$359 -----
- - - - -
- - - - -
--
NORTHWEST
MARKET --
CORE
PORTFOLIO
1,225 96.3%
98.5% $376
$359 -----
- - - - -
- - - - -
-- GRAND
TOTAL ALL
MARKETS
45,741
93.6% 94.7%
$388 $367
=====
=====
=====
==== GRAND
TOTAL ALL
MARKETS --
CORE
PORTFOLIO
45,011
93.9%(c)
94.9%(c)
$384 $367
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=====
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- (a) Represents a Property that is not part of the Core Portfolio.
  - (b) The process of filling Expansion Sites at these Properties is ongoing. A decrease in occupancy may reflect development of additional Expansion Sites.
  - (c) Changes in total portfolio occupancy include the impact of acquisitions and

expansion programs and are therefore not comparable.

- (d) During 2001, at certain Properties the amounts charged to residents for utilities were separated ("Unbundled") from their rent charges and recorded as utility income. For comparison purposes an adjustment was made to base rental income for 2000. This adjustment is reflected on this table in the monthly base rent per site amounts for 2000.

See Management's Discussion and Analysis of Financial Condition and Results of Operations.

### ITEM 3. LEGAL PROCEEDINGS

#### DEANZA SANTA CRUZ MOBILE ESTATES

The residents of DeAnza Santa Cruz Mobile Estates, a property located in Santa Cruz, California (the "City") previously brought several actions opposing certain fees and charges in connection with water service at the Property. This summary provides the history and reasoning underlying the Company's defense of the residents' claims and explains the Company's decision to continue to defend its position, which the Company believes is fair and accurate.

DeAnza Santa Cruz Mobile Estates is a 198-site Community overlooking the Pacific Ocean. It is subject to the City's rent control ordinance which limits annual rent increases to 75% of CPI. The Company purchased this Property in August 1994 from certain unaffiliated DeAnza entities ("DeAnza"). Prior to the Company's purchase in 1994, DeAnza made the decision to submeter and separately bill tenants at the Property for both water and sewer in 1993 in the face of the City's rapidly rising utility costs.

Under California Civil Code Section 798.41, DeAnza was required to reduce rent by an amount equal to the average cost of usage over the preceding 12 months. This was done. With respect to water charges, because DeAnza did not want to be regulated by the California Public Utility Commission ("CPUC"), DeAnza relied on California Public Utilities Code Section 2705.5 ("CPUC Section 2705.5") to determine what rates would be charged for water on an ongoing basis without becoming a public utility. DeAnza and the Company interpreted the statute as providing that in a submetered mobile home park, the property owner is not subject to regulation and control of the CPUC so long as the users are charged what they would be charged by the utility company if users received their water directly from the utility company. In Santa Cruz, customers receiving their water directly from the City's water utility were charged a certain lifeline rate for the first 400 ccfs of water and a greater rate for usage over 400 ccfs of water, a readiness to serve charge of \$7.80 per month and tax on the total. In reliance on CPUC Section 2705.5, DeAnza implemented its billings on this schedule notwithstanding that it did not receive the discount for the first 400 ccfs of water because it was a commercial and not a residential customer.

A dispute with the residents ensued over the readiness to serve charge and tax thereon. The residents argued that California Civil Code Section 798.41 required that the Property owner could only pass through its actual costs of water (and that the excess charges over the amount of the rent rollback were an improper rent increase) and that CPUC Section 2705.5 was not applicable. DeAnza unbundled the utility charges from rent consistent with California Civil Code Section 798.41 and it has generally been undisputed that the rent rollback was accurately calculated.

In August 1994, when the Company acquired the Property, the Company reviewed the respective legal positions of the Santa Cruz Homeowners Association ("HOA") and DeAnza and concurred with DeAnza. DeAnza's reliance on CPUC Section 2705.5 made both legal and practical sense in that residents paid only what they would pay if they lived in a residential neighborhood within the City and permitted DeAnza to recoup part of the expenses of operating a submetered system through the readiness to serve charge.

Over a period of 18 months from 1993 into May of 1995, a series of complaints were filed by the HOA and Herbert Rossman, a resident, against DeAnza, and later, the Company. DeAnza and the Company demurred to each of these complaints on the grounds that the CPUC had exclusive jurisdiction over the setting of water rates and that residents under rent control had to first exhaust their administrative remedies before proceeding in a civil action. At one point, the case was dismissed (with leave to amend) on the basis that jurisdiction was with the CPUC and, at another point, Mr. Rossman was dismissed from the case because he had not exhausted his administrative remedies.

On June 29, 1995, a hearing was held before a City rent control officer on billing and submetering issues related to both water and sewer. The Company and DeAnza prevailed on all issues related to sewer and the rent rollback related to water, but the hearing officer determined that the Company could only pass through its actual cost of water, i.e., a prorated readiness to serve charge and tax thereon. The hearing officer did not deal with the subsidy being given to residents through the quantity charge and ordered a rebate in a fixed amount per resident. The Company and DeAnza requested reconsideration on this issue, among others, which reconsideration was denied by the hearing officer.

The Company then took a writ of mandate (an appeal from an administrative order) to the Superior Court and, pending this appeal, the residents, the Company and the City agreed to stay the effect of the hearing officer's decision until the Court rendered judgment.

In July 1996, the Superior Court affirmed the hearing officer's decision without addressing concerns about the failure to take the subsidy on the quantity charge into account.

The Company requested that the City and the HOA agree to a further stay pending appeal to the court of appeal, but they refused and the appeal court denied the Company's request for a stay in late November 1996. Therefore, on January 1, 1997, the Company reduced its water charges at this Property to reflect a pass-through of only the readiness to serve charge and tax at the master meter (approximately \$0.73) and to eliminate the subsidy on the water charges. On their March 1, 1997 rent billings, residents were credited for amounts previously "overcharged" for readiness to serve charge and tax. The amount of the rebate given by the Company and DeAnza was \$36,400. In calculating the rebate, the Company and DeAnza took into account the previous subsidy on water usage although this issue had not yet been decided by the court of appeal. The Company and DeAnza felt legally safe in so doing based on language in the hearing officer's decision that actual costs could be passed through.

On March 12, 1997, the Company also filed an application with the CPUC to dedicate the water system at this Property to public use and have the CPUC set cost-based rates for water usage. The Company believed it was obligated to take this action because of its consistent reliance on CPUC Section 2705.5 as a safe harbor from CPUC jurisdiction. That is, when the Company could no longer charge for water as the local serving utility would charge, it was no longer exempt from the CPUC's jurisdiction and control under CPUC Section 2705.5.

On March 20, 1998, the court of appeal issued the writ of mandate requested by the Company on the grounds that the hearing officer had improperly calculated the amount of the rebate (meaning the Company had correctly calculated the rent credits), but also ruling that the hearing officer was correct when he found that the readiness to serve charge and tax thereon as charged by DeAnza and the Company were an inappropriate rent increase. The decision primarily reflected the court of appeal's view that CPUC Section 2705.5 operated as a ceiling and that California Civil Code Section 798.41 allowed for a charge based on actual costs, including costs of administration, operation and maintenance of the system, but that the Company had not to provide evidence of such costs. The court of appeal further agreed with the Company that the City's hearing officer did not have the authority under California Civil Code Section 798.41 to establish rates that could be charged in the future.

Following this decision, the CPUC granted the Company its certificate of convenience and necessity on December 17, 1998 and approved cost-based rates and charges for water that exceed what residents were paying under the Company's reliance on CPUC Section 2705.5. Concurrently, the CPUC also issued an Order Instituting Investigation ("OII") confirming its exclusive jurisdiction over the issue of water rates in a submetered system and commencing an investigation into the confusion and turmoil over billings in submetered properties. Specifically, the OII states: "The Commission has exclusive and primary jurisdiction over the establishment of rates for water and sewer services provided by private entities."

Specifically, the CPUC ruling regarding the Company's application stated: "The ultimate question of what fees and charges may or may not be assessed, beyond external supplier pass-through charges, for in-park facilities when a mobile home park does not adhere to the provisions of CPUC Section 2705.5, must be decided by the Commission."

After the court of appeal decision, the HOA brought all of its members back into the underlying civil action for the purpose of determining damages, including punitive damages, against the Company. The trial was continued from July 1998 to January 1999 to give the CPUC time to act on the Company's application. Notwithstanding the action taken by the CPUC in issuing the OII in December 1998, the trial court denied the Company's motion to dismiss on jurisdictional grounds and trial commenced before a jury on January 11, 1999.

Not only did the trial court not consider the Company's motion to dismiss, the trial court refused to allow evidence of the OII or the Company's CPUC approval to go before the jury. Notwithstanding the Company's strenuous objections, the judge also allowed evidence of the Company's and DeAnza's litigation tactics to be used as evidence of bad faith and oppressive actions (including evidence of the application to the CPUC requesting a \$22.00 readiness to serve charge). The Company's motion for a mistrial based upon these evidentiary rulings was denied. On January 22, 1999, the jury returned a verdict awarding \$6.0 million of punitive damages against the Company and DeAnza. The Company had previously agreed to indemnify DeAnza on the matter.

On April 19, 1999, the trial court denied all of the Company's and DeAnza's post-trial motions for judgement notwithstanding the verdict, new trial and remittur. The trial court also awarded \$700,000 of attorneys' fees to plaintiffs. The Company appealed the jury verdict and attorneys' fees award (which also accrues interest at the statutory rate of 10.0% per annum). The Company bonded the judgment pending appeal in accordance with California procedural rules, which require a bond equal to 150% of the amount of the judgment. Post-judgment interest will accrue at the statutory rate of 10.0% per annum.

On December 21, 2001 the California Court of Appeal for the Sixth District reversed the \$6.0 million punitive damage award, the related award of attorneys' fees, and, as a result, all post-judgment interest thereon, on the basis that punitive damages are not available as a remedy for a statutory violation of the MRL. The decision of the appellate court left the HOA with the right to seek a new trial in which it must prove its entitlement to either the statutory penalty and attorneys' fees available under the MRL or punitive damages based on causes of action for fraud, misrepresentation or other tort. The HOA has filed in Superior Court, seeking statutory penalties and attorneys' fees, which may be heard in late March, 2002. The Company intends to vigorously defend itself against these claims.

In two related appeals, the Company had argued that the trial court's ability to enter an award of attorneys' fees in favor of the HOA and to take certain other actions was preempted by the exercise of exclusive jurisdiction by the CPUC over the issue of how to set rates for water in a submetered mobile home park. During 2000, the California court of appeal rejected the Company's preemption argument with respect to these prior rulings in favor of plaintiffs, one of which had awarded plaintiffs approximately \$100,000 of attorneys' fees. The California Supreme Court declined to accept the case for review and the Company paid the judgment, including post-judgment interest thereon, and settled the matter for approximately \$200,000 late in 2000.

In a separate matter, in December 2000 the HOA and certain individual residents of the Property filed a complaint in the Superior Court of California, County of Santa Cruz (No. CV 139825) against the Company, certain affiliates of the Company and certain employees of the Company. The new lawsuit seeks damages, including punitive damages, for intentional infliction of emotional distress, unfair business practices, and unlawful retaliation purportedly arising from allegedly retaliatory rent increases which were noticed by the Company to certain residents in September 2000. The Company believes that the residents who received rent increase notices with respect to rent increases above those permitted by the local rent control ordinance were not covered by the ordinance either because they did not comply with the provisions of the ordinance or because they are exempted by state law. On December 29, 2000, the Superior Court of California, County of Santa Cruz enjoined such rent increases. The Company intends to vigorously defend the matter, which may go to trial in the summer of 2002.

#### ELLENBURG COMMUNITIES

The Company and certain other parties entered into a settlement agreement ("the Settlement"), which was approved by the Los Angeles County Superior Court in April 2000. The Settlement resolved substantially all of the litigation and appeals involving the Ellenburg Properties, and transactions arising out of the settlement closed on May 22, 2000 (see Note 5). Only the appeals of the two entities remain, neither of which is expected to materially affect the Company.

In connection with the Ellenburg Acquisition, on September 8, 1999, Ellenburg Fund 20 ("Fund 20") filed a cross complaint in the Ellenburg dissolution proceeding against the Company and certain of its affiliates alleging causes of action for fraud and other claims in connection with the Ellenburg acquisition. The Company subsequently successfully had the cross complaint against the Company and its affiliates dismissed with prejudice by the California Superior Court. However, Fund 20 has appealed. This appeal was one not resolved by the Settlement. The Company believes Fund 20's allegations are without merit and will vigorously defend itself.

In October 2001, Fund 20 sued the Company and certain of its affiliates again, this time in Alameda County, California making substantially the same allegations. The Company obtained an injunction preventing the case from proceeding until the Fund 20 appeal is decided and other related proceedings in Arizona (from which the Company has already been dismissed with prejudice) are concluded.

## CANDLELIGHT PROPERTIES, L.L.C

In 1996, 1997 and 1998, the Lending Partnership made loans to Candlelight Properties, L.L.C. ("Borrower") in the aggregate principal amount of \$8,050,000 (collectively, the "Loan". The Loan was secured by a mortgage on Candlelight Village ("Candlelight"), a Property in Columbus, Indiana, and was guaranteed by Ronald E. Farren, the 99% owner of Borrower. The Company accounted for the Loan as an investment in real estate and, accordingly, Candlelight's rental revenues and operating costs were included with the Company's rental revenues and operating costs for financial reporting purposes. Concurrently with the funding of the Loan, Borrower granted the Operating Partnership the option to acquire Candlelight upon the maturity of the Loan. The Operating Partnership notified Borrower that it was exercising its option to acquire Candlelight in March 1999, and the Loan subsequently matured on May 3, 1999. However, Borrower failed to repay the Loan and refused to convey Candlelight to the Operating Partnership.

Borrower filed suit in the Circuit Court of Bartholomew County, Indiana ("Court") on May 5, 1999, seeking declaratory judgment on the validity of the exercise of the option. The Lending Partnership filed suit in the Court the next day, seeking to foreclose its mortgage, and the suits were consolidated by the Court.

On September 20, 2001, the parties entered into a settlement agreement providing for a cash payment of \$10.8 million to the Lending Partnership and dismissal with prejudice of all litigation among the parties and their affiliates, among other terms. The closing under the Settlement Agreement occurred on October 5, 2001. The Company accounted for the Settlement as a disposition of the property.

## WESTWINDS

The Operating Partnership is the ground lessee ("Lessee") of certain property in San Jose, California under ground leases ("Leases") from the Nicholson Family Trust ("Lessor"). On February 13, 2001, Lessor filed a petition for arbitration of disputes over whether certain items constitute "gross revenue" under the Leases in which petition Lessor seeks damages and termination of the Leases. Lessee responded on March 12, 2001 disputing Lessor's contentions. Lessor claims that "gross revenue" for the purpose of calculating percentage rent owing to Lessor under the ground leases includes certain amounts Lessee has recouped from tenants of the Property (who are protected by rent control) related to ground rent already paid to Lessor. Lessee has successfully been able to pass-through to tenants at the property increases in ground rent under the Leases. Lessee contends that this pass-through results in reimbursement of lease expense, not "gross revenue." Lessor also contends that the "net income" of RSI, from the Property should be included in the gross revenue calculation. Lessee disputes this for many reasons, including, but not limited to, the fact that RSI is not a lessee under the Leases, the sales activity is not conducted by Lessee, and RSI is a separate company from Lessee.

Lessor's motion for summary judgment on the pass-through issue was denied by an arbitration panel on November 2, 2001. Lessor and Lessee have agreed to mediate the dispute prior to arbitration. The Company does not believe that the amounts in question are material even if resolved against the Lessee and, based upon advice of counsel, does not believe that the Lessor will be successful in terminating the Leases.

## OTHER

The Company is involved in various other legal proceedings arising in the ordinary course of business. Management believes that all proceedings herein described or referred to, taken together, are not expected to have a material adverse impact on the Company.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The following table sets forth for the period indicated, the high and low sales prices for the Company's common stock as reported by The New York Stock Exchange under the trading symbol MHC.

DISTRIBUTIONS

RETURN OF  
CAPITAL  
CLOSE HIGH  
LOW MADE  
GAAP  
BASIS(A) ---  
-----  
-----  
-----  
-----  
-----

----- 2001

1st Quarter  
\$27.0000  
\$28.7500  
\$25.8800 \$  
.4450 \$ .00  
2nd Quarter  
28.1000  
28.2000  
26.4800  
.4450 .16  
3rd Quarter  
30.4200  
30.4200  
28.0500  
.4450 .16  
4th Quarter  
31.2100  
31.6400  
30.0000  
.4450 .11  
2000 1st  
Quarter  
\$23.1250  
\$25.7500  
\$22.2500 \$  
.4150 \$ .14  
2nd Quarter  
23.9375  
25.7500  
23.0625  
.4150 .00  
3rd Quarter  
25.0000  
25.2500  
23.5000  
.4150 .17  
4th Quarter  
29.0000  
29.1250  
24.3125  
.4150 .12

(a) Represents distributions per share in excess of net income per share-basic on a GAAP basis and is not the same as return of capital on a tax basis.

The number of beneficial holders of the Company's common stock at December 31, 2001 was approximately 4,400.



MANUFACTURED HOME COMMUNITIES, INC.  
 CONSOLIDATED HISTORICAL FINANCIAL INFORMATION  
 (AMOUNTS IN THOUSANDS, EXCEPT FOR PER SHARE AND PROPERTY DATA)

ITEM 6. SELECTED FINANCIAL AND OPERATING INFORMATION

The following table sets forth selected financial and operating information on a historical basis for the Company. The following information should be read in conjunction with all of the financial statements and notes thereto included elsewhere in this Form 10-K. The historical operating data for the years ended December 31, 2001, 2000, 1999, 1998 and 1997 have been derived from the historical Financial Statements of the Company audited by Ernst & Young LLP, independent auditors.

(1) YEARS ENDED DECEMBER 31, -----	2001	2000	1999
-----	2001	2000	1999
1998 1997 -----	2001	2000	1999
----- (DOLLARS IN THOUSANDS) OPERATING DATA:			
REVENUES Base rental			
income.....			
\$195,644 \$189,481 \$181,672 \$165,340 \$108,984 RV base			
rental income.....			
5,748 7,414 9,526 7,153 -- Utility and other			
income.....			
20,366 20,096 18,219 11,785 Equity in income of			
affiliates.....			
2,065 1,070 800 Interest			
income.....			
639 1,009 1,669 3,048 1,941 -----			
----- Total			
revenues.....			
225,856 220,678 215,028 194,830 123,510 -----			
----- EXPENSES Property			
operating and maintenance.....			
62,008 59,199 58,038 53,064 32,343 Real estate			
taxes.....			
17,420 16,888 16,460 14,470 8,352 Property			
management.....			
8,984 8,690 8,337 7,108 5,079 General and			
administrative.....			
6,687 6,423 6,092 5,411 4,559 Interest and related			
amortization.....			
53,775 49,693 21,753 Depreciation on corporate			
assets.....			
1,243 1,139 1,005			
995 590 Depreciation on real estate assets and other			
costs.....			
34,833 34,411 34,486 28,426 17,365 --			
----- Total			
expenses.....			
182,480 180,030 178,193 159,167 90,041 -----			
----- Income from			
operations.....			
43,376 40,648 36,835 35,663 33,469 Gain on sale of			
property and other.....			
8,168			
12,053 -- -----			
----- Income before allocation to minority interests			
and extraordinary loss on early extinguishment of			
debt.....			
51,544 52,701 36,835 35,663 33,469 (Income)			
allocated to Common OP Units.....			
(8,209) (8,463) (6,219) (6,733) (4,373) (Income)			
allocated to Perpetual Preferred OP Units.....			
(11,252) (11,252) (2,844) -- -- -----			
----- Income before extraordinary			
loss on early extinguishment of			
debt.....			
32,986 27,772 28,930 29,096 Extraordinary loss on			
early extinguishment of debt (net of \$264 and \$105			
allocated to minority			
interests).....			
(1,041) -- -- (451) -----			
----- NET			
INCOME.....			
\$ 32,083 \$ 31,945 \$ 27,772 \$ 28,930 \$ 28,645 =====			
===== Net income per			
Common Share before extraordinary item --			
basic.....			
\$ 1.53 \$ 1.54 \$ 1.10 \$ 1.13 \$ 1.18 =====			
===== Net income per Common Share			
before extraordinary item --			
diluted.....			
\$ 1.49 \$ 1.51 \$ 1.09 \$ 1.12 \$ 1.16 =====			
===== Net income per Common Share			
-- basic.....			
\$ 1.53 \$ 1.49 \$ 1.10			
\$ 1.13 \$ 1.16 =====			

===== Net income per Common Share --					
diluted.....	\$ 1.49	\$ 1.46	\$ 1.09	\$	
1.12 \$ 1.15	=====	=====	=====	=====	
===== Dividend declared per Common					
Share.....	\$ 1.78	\$ 1.66	\$ 1.55		
\$ 1.45 \$ 1.32	=====	=====	=====	=====	
===== Weighted average Common Shares outstanding --					
basic.....	21,036	21,469	25,224	25,626	24,689
Weighted average Common OP Units					
outstanding.....	5,466	5,592	5,704	5,955	
3,749 Weighted average Common Shares outstanding --					
diluted.....	27,010	27,408	31,252	31,962	28,762

MANUFACTURED HOME COMMUNITIES, INC.  
CONSOLIDATED HISTORICAL FINANCIAL INFORMATION  
(CONTINUED)  
(AMOUNTS IN THOUSANDS, EXCEPT FOR PER SHARE AND PROPERTY DATA)

(1) AS OF DECEMBER 31, -----  
-----  
--- 2001 2000 1999 1998 1997 ----- --  
-----  
- BALANCE SHEET DATA: Real estate, before  
accumulated depreciation(2)... \$1,238,138  
\$1,218,176 \$1,264,343 \$1,237,431 \$ 936,318  
Total  
assets.....  
1,099,963 1,104,304 1,160,338 1,176,841  
864,365 Total mortgages and  
loans..... 708,857  
719,684 725,264 750,849 495,172 Minority  
interests.....  
171,147 171,271 179,397 70,468 67,453  
Stockholders'  
equity.....  
175,150 168,095 211,401 310,441 280,575  
OTHER DATA: Funds from  
operations(3)..... \$  
66,957 \$ 63,807 \$ 68,477 \$ 64,089 \$ 50,834  
Net cash flow: Operating  
activities..... \$  
80,708 \$ 68,001 \$ 72,580 \$ 71,977 \$ 54,581  
Investing  
activities..... \$  
(23,067) \$ 23,102 \$ (37,868) \$ (262,762)  
\$(239,445) Financing  
activities..... \$  
(59,134) \$ (94,932) \$ (41,693) \$ 203,533 \$  
185,449 Total Properties (at end of period)  
(4)..... 148 154 157 154 121 Total  
sites (at end of  
period)..... 50,761 51,452  
54,002 53,009 44,108 Total sites (weighted  
average)(5)..... 46,243 46,964  
46,914 43,932 29,323

- (1) See the Consolidated Financial Statements of the Company included elsewhere herein.
- (2) The Company believes that the book value of the Properties, which reflects the historical costs of such real estate assets less accumulated depreciation, is less than the current market value of the Properties.
- (3) The Company generally considers Funds From Operations ("FFO") to be an appropriate measure of the performance of an equity Real Estate Investment Trust ("REIT"). FFO was redefined by the National Association of Real Estate Investment Trusts ("NAREIT") in October 1999, effective January 1, 2000, as net income (computed in accordance with generally accepted accounting principles ["GAAP"]), before allocation to minority interests, excluding gains (or losses) from sales of property, plus real estate depreciation and after adjustments for unconsolidated partnerships and joint ventures. For purposes of presenting FFO, the revised definition of FFO has been given retroactive treatment. The Company believes that FFO is helpful to investors as a measure of the performance of an equity REIT because, along with cash flows from operating activities, financing activities and investing activities, it provides investors an understanding of the ability of the Company to incur and service debt and to make capital expenditures. The Company computes FFO in accordance with the NAREIT definition which may differ from the methodology for calculating FFO utilized by other equity REITs and, accordingly, may not be comparable to such other REITs computations. FFO in and of itself does not represent cash generated from operating activities in accordance with GAAP and therefore should not be considered an alternative to net income as an indication of the Company's performance or to net cash flows from operating activities as determined by GAAP as a measure of liquidity and is not necessarily indicative of cash available to fund cash needs.
- (4) During the year ended December 31, 1997, 39 Properties were acquired; net operating income attributable to such Properties during 1997 was approximately \$3.8 million, which included approximately \$1.7 million of

depreciation and amortization expense. During the year ended December 31, 1998, 41 Properties were acquired; net operating income attributable to such Properties during 1998 was approximately \$7.6 million, which included approximately \$3.9 million of depreciation and amortization expense. During the year ended December 31, 1999, two Properties were acquired; net operating income attributable to such Properties during 1999 was approximately \$87,000, which included approximately \$104,000 of depreciation expense. During the year ended December 31, 2000, three Properties and a water and wastewater treatment company were sold; net operating income attributable to such Properties during 2000 was approximately \$1.6 million, which included approximately \$623,000 of depreciation expense. During the year ended December 31, 2001, two Properties were purchased; net operating income attributable to such Properties during 2001 was approximately \$1.3 million, which included approximately \$396,000 of depreciation expense. Also during the year ended December 31, 2001, eight Properties were sold; net operating income attributable to such Properties during 2001 was \$1.0 million, which included approximately \$235,000 of depreciation expense.

- (5) Excludes recreational vehicle sites and sites held through unconsolidated joint ventures.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with "Selected Financial Data" and the historical Consolidated Financial Statements and Notes thereto appearing elsewhere in this Form 10-K. The following discussion may contain certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 which reflect management's current views with respect to future events and financial performance. Such forward-looking statements are subject to certain risks and uncertainties, including, but not limited to, the effects of future events on the Company's financial performance; the adverse impact of external factors such as inflation and consumer confidence; and the risks associated with real estate ownership.

RESULTS OF OPERATIONS

PROPERTY ACQUISITIONS, JOINT VENTURES AND DISPOSITIONS

The following chart lists the Properties acquired or sold since January 1, 1999. The Company defines its core Community portfolio ("Core Portfolio") as Properties owned throughout both periods of comparison. Excluded from the Core Portfolio are any Properties acquired or sold during the period and also any recreational vehicle ("RV") Properties which, together, are referred to as the "Non-Core" Properties.

PROPERTY TRANSACTION DATE SITES -----	
-- ----- TOTAL SITES AS OF JANUARY 1,	
1999.....	53,009 ACQUISITIONS: The Meadows.....
	April 1, 1999 380 Coquina Crossing..... July 23, 1999 270 Grand Island (f.k.a. Golden Lakes)..... January 3, 2001 421 Lakes at Countrywood (f.k.a. Chain O' Lakes)..... January 3, 2001 309 Bulow Resort RV..... July 1, 2001 352 INVESTMENT IN UNCONSOLIDATED JOINT VENTURES: Lakeshore Communities (2 properties)..... 1999 343 EXPANSION SITE DEVELOPMENT: Sites added in 1999..... -- Sites added in 2000..... 108 Sites added in 2001..... 143 DISPOSITIONS: Garden West Office Plaza..... October 26, 1999 -- FFEC-Six (water and wastewater service company)..... February 29, 2000 -- Mesa Regal RV Resort..... May 22, 2000 (2,005) Naples Estates..... May 22, 2000 (484) Mon Dak..... May 22, 2000 (219) Dellwood Estates..... February 13, 2001 (136) Briarwood..... February 13, 2001 (166) Bonner Springs..... February 13, 2001 (211) Carriage Park..... February 13, 2001 (143) North Star..... February 13, 2001 (219) Quivira Hills..... February 13, 2001 (142) Rockwood..... February 13, 2001 (264) Candlelight..... October 5, 2001 (585) ----- TOTAL SITES AS OF DECEMBER 31, 2001.....
	50,761 =====

## TRENDS

Occupancy in the Company's Properties as well as the ability to increase rental rates directly affects revenues. In 2001, occupancy in the Company's Core Portfolio has remained relatively stable. Also during 2001, average monthly base rental rates for the Core Portfolio increased approximately 4.5%. The Company believes these trends will continue through 2002.

## CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The Company's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States, which require the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and the related disclosures. The Company believes that the following critical accounting policies, among others, affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.

The Company periodically evaluates its long-lived assets, including its investments in real estate for impairment indicators. The judgments regarding the existence of impairment indicators, are based on factors such as operational performance, market conditions and legal factors. Future events could occur which would cause us to conclude that impairment indicators exist and an impairment loss is warranted.

The valuation of financial instruments under SFAS No. 107 and SFAS No. 133 requires the Company to make estimates and judgments that affect the fair value of the instruments. The Company, where possible, bases the fair values of its financial instruments, including its derivative instrument, on listed market prices and third party quotes. Where these are not available, the Company bases its estimates on other factors relevant to the financial instrument.

COMPARISON OF YEAR ENDED DECEMBER 31, 2001 TO YEAR ENDED DECEMBER 31, 2000

Since December 31, 1999, the gross investment in real estate increased from \$1,264 million to \$1,238 million as of December 31, 2001, due primarily to the aforementioned acquisitions and dispositions of Properties during the period. The total number of sites owned or controlled decreased from 54,002 as of December 31, 1999 to 50,761 as of December 31, 2001.

The following table summarizes certain financial and statistical data for the Core Portfolio and the Total Portfolio for the years ended December 31, 2001 and 2000.

CORE PORTFOLIO TOTAL PORTFOLIO

	CORE PORTFOLIO		TOTAL PORTFOLIO	
	2001	2000	2001	2000
	(dollars in thousands)	(dollars in thousands)	(dollars in thousands)	(dollars in thousands)
INCREASE/ % INCREASE/ %				
(dollars in thousands) 2001				
2000 (DECREASE) CHANGE 2001				
2000 (DECREASE) CHANGE				
-----				
---- (DOLLARS IN THOUSANDS)				
Base rental				
income(1).....	\$192,160		\$195,644	
	\$183,615	\$8,545	4.7%	\$195,644
	\$189,064	\$6,580	3.5%	Utility
				and other income.....
	20,222	18,664	1,558	8.3%
	27,762	28,197	(435)	(1.5%)
				Equity in income of
				affiliates... -- -- --
	1,811	2,408	(597)	(24.8%)
				Interest
income.....	-- --			
	-- --	639	1,009	(370) (36.7%)
-----				
---- Total				
revenues.....				
	212,382	202,279	10,103	5.0%
	225,856	220,678	5,178	2.3%
Property operating and				
maintenance.....				
	57,787	54,150	3,637	6.7%
	62,008	59,199	2,809	4.7%
				Real estate taxes.....
	16,773	16,321	452	2.8%
	16,888	532	3.2%	Property
				management.....
	8,121	473	5.8%	8,984
				8,690
				294
				3.4% General and
				administrative.....
	-- --	6,687	6,423	264
				4.1%
-----				
Total operating				
expenses.....				
	83,154	78,592		
	4,562	5.8%	95,099	91,200
				3,899
				4.3%
-----				
-- Income from				
operations before interest,				
depreciation and amortization				
expenses.....				
	129,228			
	123,687	5,541	4.5%	130,757
	129,478	1,279	1.0%	Interest
				and related
amortization.....				
	-- --			51,305
				53,280
	(1,975)	(3.7%)	Depreciation on	corporate
assets.....				
	-- --			1,243
				1,139
				104
				9.1% Property depreciation and
				other.....
	32,243	30,792	1,451	4.7%
	34,833	34,411	422	1.2%
-----				
Income from				
operations(2).....				
	\$96,985	\$		\$
	92,895	\$4,090	4.4%	\$43,376
	40,648	\$2,728	6.7%	=====

```

=====
=====
===== Site and Occupancy
Information(3): Average total
sites..... 44,966
44,828 138 0.3% 46,243 46,964
(721) (1.5%) Average occupied
sites..... 42,384 42,320
61 0.2% 43,576 44,325 (749)
(1.7%) Occupancy
%..... 94.3%
94.4% (0.1%) (0.1%) 94.2%
94.4% (0.2%) (0.2%) Monthly
base rent per site..... $
377.82 $ 361.47 $16.35 4.5% $
374.15 $ 355.45 $ 18.70 5.3%
Total sites as of December
31,... 45,011 44,868 143 0.3%
45,743 46,734 (991) (2.1%)
Total occupied sites as of
December
31,..... 42,243
42,529 (286) (0.7%) 42,887
44,270 (1,383) (3.1%)

```

- 
- (1) During 2001, at certain Properties the amounts charged to residents for utilities were separated ("Unbundled") from their base rent charges and recorded as utility income. For comparison purposes, a reclassification was made to base rental income for 2000 on this table. This reclassification is also reflected in the monthly base rent per site amounts for 2000.
  - (2) Income from operations for the Core Portfolio does not include an allocation of income from affiliates, interest income, corporate general and administrative expense, interest expense and related amortization or depreciation on corporate assets.
  - (3) Site and occupancy information does not include the Properties owned through unconsolidated joint ventures or the RV Properties.



## Revenues

The 4.7% increase in base rental income for the Core Portfolio reflects a 4.5% increase in monthly base rent per site coupled with a 0.2% increase in average occupied sites. The increase in utility and other income for the Core Portfolio is due primarily to increases in pass through items such as utilities and real estate taxes -- which resulted from higher expenses for these items. For the Total Portfolio, changes in base rental income and utility and other income generally reflect those of the Core Portfolio and the effect of acquisition and disposition of the Non-Core Properties.

Equity in income of affiliates decreased 24.8%, reflecting lower sales volumes. Combined home sales revenue decreased approximately \$4.0 million, of which \$3.3 million is attributable to a decline in new home inventory sales volume. Sales volumes for new home inventory, used home inventory and brokered home sales were 485, 250 and 1,114, respectively, for the year ended December 31, 2001, and 535, 290 and 1,271, respectively, for the year ended December 31, 2000.

The decrease in interest income is primarily due to the repayment of certain notes receivable, fewer short-term investments and lower interest rates. Short-term investments had average balances for the years ended December 31, 2001 and 2000 of approximately \$1.9 million and \$1.5 million, respectively, which earned interest income at an effective rate of 3.8% and 6.0% per annum, respectively.

## Operating Expenses

The increase in property operating and maintenance expense for the Core Portfolio is due primarily to increases in utility expenses passed through and included in utility income. Expenses for the Core Portfolio also reflect increases in payroll and property insurance expenses. Core Portfolio real estate taxes increased 2.8% generally due to higher assessed values on certain Properties. The increase in Total Portfolio property operating and maintenance expense and real estate taxes is also impacted by acquisition and disposition of Non-Core Properties. Property management expense allocated to the Core Portfolio, which reflects costs of managing the Properties and is estimated based on a percentage of Property revenues, increased 5.8%.

General and administrative expenses ("G&A") increased 4.1% due to increased public company costs and related expenses and promotional costs. G&A for 2001 includes a charge for additional amortization of deferred compensation offset by a reversal of legal expenses previously accrued related to the Ellenburg settlement.

Interest and related amortization decreased due to lower interest rates during the period. The weighted average outstanding debt balances for the years ended December 31, 2001 and 2000 were \$713.2 million and \$707.5 million, respectively. The effective interest rate was 7.0% and 7.4% per annum for the years ended December 31, 2001 and 2000, respectively.

Depreciation on corporate assets increased due to fixed asset additions related to information and communication systems. Depreciation on real estate assets and other costs increased due primarily to the acquisition and disposition of Non-Core Properties.

COMPARISON OF YEAR ENDED DECEMBER 31, 2000 TO YEAR ENDED DECEMBER 31, 1999

Since December 31, 1998, the gross investment in real estate decreased from \$1,237 million to \$1,218 million as of December 31, 2000, due primarily to the aforementioned acquisitions and dispositions of Properties during the period. The total number of sites owned or controlled decreased from 53,009 as of December 31, 1998 to 51,452 as of December 31, 2000.

The following table summarizes certain financial and statistical data for the Core Portfolio and the Total Portfolio for the years ended December 31, 2000 and 1999.

CORE PORTFOLIO		TOTAL PORTFOLIO	
-----		-----	
-----		-----	
INCREASE/	% INCREASE/	INCREASE/	%
(dollars in thousands)	2000	(dollars in thousands)	2000
1999 (DECREASE)	CHANGE	1999 (DECREASE)	CHANGE
-----	-----	-----	-----
-----			
---- (DOLLARS IN THOUSANDS)			
Base rental			
income.....	\$186,148		
\$178,095	\$8,053	4.5%	\$189,481
\$181,672	\$7,809	4.3%	Utility
			and other income.....
17,986	17,436	550	3.2%
29,622	(1,842)	(6.2%)	Equity
			in income of affiliates... --
--	--	2,408	2,065
		343	16.6%
			Interest
income.....	--	--	--
--	--	1,009	1,669
(39.5%)		(660)	
-----	-----	-----	-----
----- Total			
revenues.....			
204,134	195,531	8,603	4.4%
220,678	215,028	5,650	2.6%
			Property operating and
maintenance.....			
54,358	52,096	2,262	4.3%
59,199	58,038	1,161	2.0%
			Real estate taxes.....
16,186	15,811	375	2.4%
16,460	428	2.6%	Property
			management.....
8,194			
7,725	469	6.1%	8,690
			8,337
			353
			4.2%
			General and
administrative.....	--	--	--
--	6,423	6,092	331
			5.4%
-----	-----	-----	-----
-----			
Total operating			
expenses.....	78,738	75,632	
3,106	4.1%	91,200	88,927
			2,273
			2.6%
-----	-----	-----	-----
-----			
--	--	--	--
			Income from
			operations before interest,
			depreciation and amortization
			expenses.....
			125,396
			119,899
			5,497
			4.6%
			129,478
			126,101
			3,377
			2.7%
			Interest
			and related
amortization.....			
--	--	--	--
			53,280
			53,775
(495)	(0.9%)	Depreciation on	
		corporate	
assets.....			
--	--	--	--
			1,139
			1,005
			134
			13.3%
			Property depreciation
			and
other.....			
31,366	30,912	454	1.5%
34,486	(75)	(0.2%)	
-----	-----	-----	-----
-----			
Income			
from operations(1).....	\$		
94,030	\$88,987	\$5,043	5.7%
40,648	\$36,835	\$3,813	10.4%
=====	=====	=====	=====

```

=====
===== Site and
Occupancy Information(2):
Average total
sites..... 45,894
45,810 84 0.2% 46,964 46,914
50 0.1% Average occupied
sites..... 43,410 43,138
272 0.6% 44,325 44,110 215
0.5% Occupancy
%..... 94.6%
94.2% 0.4% 0.4% 94.4% 94.0%
0.4% 0.4% Monthly base rent
per site..... $ 357.35 $
344.04 $13.31 3.9% $ 356.24 $
343.22 $ 13.02 3.8% Total
sites as of December 31,...
45,902 45,808 94 0.2% 46,734
47,284 (550) (1.2%) Total
occupied sites as of December
31,..... 43,595
43,289 306 0.7% 44,270 44,555
(285) (0.6%)

```

- - - - -

- (1) Income from operations for the Core Portfolio does not include an allocation of income from affiliates, interest income, corporate general and administrative expense, interest expense and related amortization or depreciation on corporate assets.
- (2) Site and occupancy information does not include the five Properties owned through joint ventures or the three RV properties.

## Revenues

The 4.5% increase in base rental income for the Core Portfolio reflects a 3.9% increase in monthly base rent per site coupled with a 0.6% increase in average occupied sites. The 4.3% increase in base rental income for the Total Portfolio reflects a 3.8% increase in monthly base rent per site coupled with a 0.5% increase in average occupied sites and also reflects the acquisition and disposition of Non-Core Properties. The increase in utility and other income for the Core Portfolio is due primarily to increases in pass through items such as utilities and real estate taxes -- which resulted from higher expenses for these items. The decrease in Total Portfolio utility and other income is due primarily to the sale of Mesa Regal RV resort and other changes in the Non-Core Properties. Also included in other income is a gain on the sale of the FFEC-Six water and wastewater treatment company of \$719,000, partially offset by an impairment loss on the DeAnza Santa Cruz water and wastewater service company of \$701,000.

The decrease in interest income is primarily due to the repayment of certain notes receivable and fewer short-term investments. Short-term investments had average balances for the years ended December 31, 2000 and 1999 of approximately \$1.5 million and \$2.8 million, respectively, which earned interest income at an effective rate of 6.0% and 6.3% per annum, respectively.

## Operating Expenses

The increase in property operating and maintenance expense for the Core Portfolio is due primarily to increases in utility expenses passed through and included in utility income. Expenses for the Core Portfolio also reflect increases in repairs and maintenance expense, payroll and property general and administrative expenses partially offset by decreased insurance and other expenses. Core Portfolio real estate taxes increased 2.4% generally due to higher property assessments on certain Properties. The increase in Total Portfolio property operating and maintenance expense and real estate taxes is also impacted by acquisition and disposition of Non-Core Properties. Property management expense for the Core Portfolio, which reflects costs of managing the Properties and is estimated based on a percentage of Property revenues, increased 6.1%.

General and administrative expenses increased primarily due to increased payroll resulting from salary increases and increased public company related expenses.

Interest and related amortization decreased due to lower weighted average outstanding debt balances during the period. The weighted average outstanding debt balances for the years ended December 31, 2000 and 1999 were \$707.5 million and \$738.1 million, respectively. The effective interest rate was 7.4% and 7.2% per annum for the years ended December 31, 2000 and 1999, respectively.

Depreciation on corporate assets increased due to fixed asset additions related to information and communication systems. Depreciation on real estate assets and other costs decreased due primarily to the acquisition and disposition of Non-Core Properties.

LIQUIDITY AND CAPITAL RESOURCES

LIQUIDITY

As of December 31, 2001, the Company had \$1.4 million in cash and cash equivalents and \$133.8 million available on its line of credit. The Company expects to meet its short-term liquidity requirements, including its distributions, generally through its working capital, net cash provided by operating activities and availability under the existing line of credit. The Company expects to meet certain long-term liquidity requirements such as scheduled debt maturities, property acquisitions and capital improvements by long-term collateralized and uncollateralized borrowings including borrowings under its existing line of credit and the issuance of debt securities or additional equity securities in the Company, in addition to working capital.

In order to qualify as a REIT for federal income tax purposes, the Company must distribute 95% or more of its taxable income (excluding capital gains). The following distributions have been declared and/or paid to common stockholders and minority interests since January 1, 1999.

DISTRIBUTION  
FOR THE  
SHAREHOLDER  
AMOUNT PER  
SHARE  
QUARTER  
ENDING  
RECORD DATE  
PAYMENT  
DATE -----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----

\$0.3875	March 31,
1999	March
26, 1999	
April 9,	
1999	
\$0.3875	June 30,
1999	June
25, 1999	
July 9,	
1999	
\$0.3875	September
	30, 1999
	September
	24, 1999
	October 8,
	1999
\$0.3875	December
	31, 1999
	December
	31, 1999
	January 14,
	2000 - ----
	-----
	-----
	-----
	-----
	-----
	-----
	-----
---	\$0.4150
	March 31,
	2000
	March
	31, 2000
	April 14,
	2000
	\$0.4150
	June 30,
	2000
	June
	30, 2000
	July 14,
	2000
	\$0.4150
	September

30, 2000  
 September  
 29, 2000  
 October 13,  
 2000  
 \$0.4150  
 December  
 31, 2000  
 December  
 29, 2000  
 January 12,  
 2001 - ----  
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 -----  
 -----  
 -----  
 -----  
 -----  
 --- \$0.4450  
 March 31,  
 2001 March  
 30, 2001  
 April 13,  
 2001  
 \$0.4450  
 June 30,  
 2001 June  
 29, 2001  
 July 13,  
 2001  
 \$0.4450  
 September  
 30, 2001  
 September  
 28, 2001  
 October 12,  
 2001  
 \$0.4450  
 December  
 31, 2001  
 December  
 28, 2001  
 January 11,  
 2002

The Operating Partnership paid distributions of 9.0% per annum on the \$125 million of Series D Cumulative Redeemable Perpetual Preferred Units ("Preferred Units"). Distributions on the Preferred Units were paid quarterly on the last calendar day of each quarter beginning December 31, 1999. The Company expects to continue to make regular quarterly distributions and has set its 2002 distribution to common stockholders at \$1.90 per share per annum.

#### MORTGAGES AND CREDIT FACILITIES

On October 29, 2001, the Company entered into an interest rate swap agreement, fixing the London Interbank Offered Rate ("LIBOR") on \$100 million of the Company's floating rate debt at approximately 3.7% per annum for the period October 2001 through August 2004. The terms of the swap require monthly settlements on the same dates interest payments are due on the debt. In accordance with SFAS No. 133 as herein defined, the interest rate swap will be reflected at market value. The Company believes the swap is a perfectly effective cash flow hedge, under SFAS No. 133 and there will be no effect on net income as a result of the mark-to-market adjustments.

During the year ended December 31, 2001, the Company borrowed \$46.0 million on its line of credit and paid down \$89.7 million on the line of credit. The line of credit bears interest at a per annum rate of LIBOR plus 1.125%.

In July of 2001, the Company paid off three maturing mortgages in the amount of \$12.1 million. The payoffs were funded with borrowings on the line of credit.

On August 3, 2001, the Company entered into a \$50.0 million mortgage note (the "Stagecoach Mortgage") collateralized by 7 Properties beneficially owned by MHC Stagecoach, L.L.C. The Stagecoach Mortgage bears interest at a rate of 6.98% per annum, amortizes beginning September 1, 2001 over 10 years and matures August 31, 2011. Proceeds from the financing were used to reduce borrowings on the line of credit by \$37.9 million.

On February 24, 2000, the Company entered into mortgage agreements collateralizing two Properties for a total of \$14.6 million. The mortgage notes mature on March 1, 2010, amortize beginning March 1, 2000 over 30 years and bear interest at a rate of approximately 8.3% per annum.

On April 3, 2000, the Company extended to April 3, 2002 the maturity of its \$100 million unsecured term loan (the "Term Loan") with a group of banks with interest only payable monthly at a per annum rate of LIBOR plus 1.0%. On February 8, 2002, the Company entered into a term loan credit agreement with the same group of banks, which extended the Term Loan to August 9, 2005.

On June 30, 2000, the Company obtained \$110 million in debt financing consisting of two mortgage notes -- one for \$94.3 million and one for \$15.7 million -- secured by seven Properties. The proceeds of the financing were used to repay \$60 million of mortgage debt secured by the seven Properties, to repay amounts outstanding under the Company's line of credit and for working capital purposes. The Company recorded a \$1.0 million extraordinary loss (net of \$264,000 allocated to Minority Interests) in connection with the early repayment of the \$60 million of mortgage debt.

On August 9, 2000, the Company amended its unsecured line of credit with a bank (the "Credit Agreement") bearing interest at a per annum rate of LIBOR plus 1.125%. Among other things, the amendment lowered the total facility under the Credit Agreement to \$150 million and extended the maturity to August 9, 2003. The Company pays a quarterly fee on the average unused amount of such credit equal to 0.15% of such amount. As of December 31, 2001, \$133.8 million was available under the Credit Agreement.

Certain of the Company's mortgage and credit agreements contain covenants and restrictions including restrictions as to the ratio of secured or unsecured debt versus encumbered or unencumbered assets, the ratio of fixed charges-to-earnings before interest, taxes, depreciation and amortization ("EBITDA"), limitations on certain holdings and other restrictions.

#### ACQUISITIONS, DISPOSITIONS AND INVESTMENTS

On September 4, 1997, the Company entered into a portfolio purchase agreement (as amended by a supplemental agreement on December 17, 1997) to acquire 37 manufactured home communities (the "Ellenburg Communities") from partnerships having Ellenburg Capital Corporation ("ECC") as the general partner, for a purchase price in excess of \$300 million. During 1997 and 1998, the Company closed on the acquisition of 31 of the Ellenburg Communities for an aggregate purchase price of approximately \$278 million and gained control of an additional five Ellenburg Communities with acquisition advances of approximately \$57 million to the partnerships which owned such Ellenburg Communities. All fundings related to the acquisition were funded by the Company with borrowings under the Company's line of credit, term bank facilities, assumed debt and the issuance of Common OP Units.

During 1998, the Company received approximately \$14.3 million, including approximately \$365,000 of interest income, which was being held subject to the completion of due diligence procedures on the Ellenburg Communities. The \$14.3 million was initially recorded as a liability until 1999 when a settlement of certain related issues was substantially complete and accordingly, in a non-cash transaction, relieved the liability and adjusted the purchase price of the Ellenburg Communities.

In April 2000, the California Superior Court approved a settlement agreement (the "Settlement") in connection with the dissolution proceeding of ECC and its affiliated partnerships. As part of the Settlement, the Company received \$13.5 million previously held in escrow in connection with the purchase of the Ellenburg Communities and recorded \$3.0 million of interest income related to these funds. In connection with the Settlement, the Company sold three communities -- Mesa Regal RV Resort, Mon Dak and Naples Estates -- for an aggregate sales price of \$59.0 million, including cash proceeds of \$40.0 million and assumption of debt by the purchaser of \$19.0 million. The Company recorded a \$9.1 million gain on the sale of these Properties. Proceeds from the Settlement and property sales were used to pay down the Company's line of credit.

On January 6, 1998, the Company funded a \$12.3 million loan (the "Meadows Loan") to Meadows Preservation, Inc. The Meadows Loan was collateralized by The Meadows manufactured home community located in Palm Beach Gardens, Florida. On April 1, 1999, the Company effectively exchanged the Meadows Loan for an equity and debt interest in the partnership that owns The Meadows. The Company includes The Meadows in investment in real estate and the related results of operations in the Statement of Operations.

On July 23, 1999, the Company acquired Coquina Crossing, located in St. Augustine, Florida, for a purchase price of approximately \$10.4 million. The acquisition was funded with a borrowing under the Company's line of credit. Coquina Crossing is a 748-site senior community with 274 developed sites and zoned expansion potential for 479 sites. In addition, Realty Systems, Inc. ("RSI"), an affiliate of the Company, purchased the model home inventory at the community for approximately \$1.1 million.

On February 29, 2000, MHC Systems, Inc., a consolidated subsidiary of the Company, disposed of the water and wastewater service company and facilities known as FFEC-Six in a cash sale. Net proceeds from the sale of approximately \$4.2 million were used to pay down the Company's line of credit .

On December 28, 2000, the Company, through its joint venture with Meadows Management Company, acquired a 50% economic interest in Voyager RV Resort, a 1,576 site RV resort in Tucson, Arizona, for total consideration of \$8.0 million. The Company's investment included cash of \$3.0 million, its 50% interest in land held through the joint venture valued at \$2.0 million and notes receivable from the principals of Meadows Management Company totaling \$3.0 million.

On January 3, 2001, the Company acquired two Florida Properties, totaling 730 sites, for an aggregate purchase price of approximately \$16.3 million. The Lakes at Countrywood is a 421-site community in Plant City, near Tampa, Florida, and includes approximately 23 acres for expansion. Grand Island is a 309-site community in Grand Island, near Orlando, Florida, and includes a marina with 50 boat docks. The acquisition was funded with a borrowing under the Company's line of credit.

On February 13, 2001, the Company completed the disposition of seven Properties, totaling 1,281 sites, in Kansas, Missouri and Oklahoma, for a total sale price of approximately \$17.4 million. A gain of \$8.1 million was recorded on the accompanying consolidated statements of operations. Proceeds from the sale were used to reduce the amount outstanding on the Company's line of credit.

On October 5, 2001, the Company finalized a settlement agreement between the Lending Partnership, the Operating Partnership and the limited liability partnership which owns Candlelight Village in Columbus, Indiana. In 1996, the Company funded a recourse loan to the owner of Candlelight Village and accounted for the loan as an investment in real estate. The Company received \$10.8 million in proceeds from the settlement, which was accounted for as a sale of real estate and recorded a \$75,000 gain on the sale. Proceeds from the sale were used as working capital.

#### CAPITAL IMPROVEMENTS

Capital expenditures for improvements are identified by the Company as recurring capital expenditures ("Recurring CapEx"), site development costs and corporate headquarters costs. Recurring CapEx was approximately \$12.7 million and \$7.9 million for the years ended December 31, 2001 and 2000, respectively. Of these expenditures, the Company believes that approximately \$7.1 million or \$142 per site for 2001 and \$6.5 million or \$130 per site for 2000 are non-revenue producing improvements which are necessary in order to increase and/or maintain occupancy levels and maintain competitive market rents for new and renewing residents. Site development costs were approximately \$9.7 million and \$7.9 million for the years ended December 31, 2001 and 2000, respectively, and represent costs to develop expansion sites at certain of the Company's Properties.

#### EQUITY TRANSACTIONS

On March 26, 1999, the Operating Partnership repurchased and cancelled 200,000 OP Units from a limited partner of the Operating Partnership.



On September 30, 1999, the Operating Partnership completed a \$125 million private placement of 9.0% Series D Cumulative Perpetual Preferred Units ("POP Units") to two institutional investors. The POP Units, which are callable by the Company after five years, have no stated maturity or mandatory redemption. Net proceeds from the offering of \$121 million were used to repay amounts outstanding under the Company's line of credit facility and for other corporate purposes.

In March 1997, the Company's Board of Directors approved a common stock repurchase plan whereby the Company was authorized to repurchase and retire shares of its common stock. No shares of Common Stock were repurchased during the year ended December 31, 2001. However, under the plan, the Company repurchased approximately 2.2 million shares of Common Stock at an average price of \$24.06 per share during the year ended December 31, 2000 and 4.1 million shares of Common Stock at an average price of \$23.40 per share during the year ended December 31, 1999, using proceeds from borrowings on the line of credit.

#### INFLATION

Substantially all of the leases at the Properties allow for monthly or annual rent increases which provide the Company with the opportunity to achieve increases, where justified by the market, as each lease matures. Such types of leases generally minimize the risk of inflation to the Company.

#### FUNDS FROM OPERATIONS

FFO was redefined by NAREIT in October 1999, effective January 1, 2000, as net income (computed in accordance with GAAP), before allocation to minority interests, excluding gains (or losses) from sales of property, plus real estate depreciation and after adjustments for unconsolidated partnerships and joint ventures. The Company computes FFO in accordance with the NAREIT definition, which may differ from the methodology for calculating FFO utilized by other equity REITs and, accordingly, may not be comparable to such other REIT's computations. Funds available for distribution ("FAD") is defined as FFO less non-revenue producing capital expenditures and amortization payments on mortgage loan principal. The Company believes that FFO and FAD are useful to investors as a measure of the performance of an equity REIT because, along with cash flows from operating activities, financing activities and investing activities, they provide investors an understanding of the ability of the Company to incur and service debt and to make capital expenditures. FFO and FAD in and of themselves do not represent cash generated from operating activities in accordance with GAAP and therefore should not be considered an alternative to net income as an indication of the Company's performance or to net cash flows from operating activities as determined by GAAP as a measure of liquidity and are not necessarily indicative of cash available to fund cash needs.

The following table presents a calculation of FFO and FAD for the years ended December 31, 2001, 2000 and 1999 (amounts in thousands):

	2001	2000	1999	
COMPUTATION OF FUNDS FROM OPERATIONS: Income before				
extraordinary loss on early Extinguishment of				
debt.....				
\$ 32,083	\$ 32,986	\$ 27,772	Income allocated to	
Common OP Units.....	8,209	8,463	6,219	Depreciation on real estate assets and other
costs.....	34,833	34,411	34,486	Gain on sale of
Properties and other.....	(8,168)			(12,053) --
Funds from				operations.....
\$ 66,957	\$ 63,807	\$ 68,477	=====	=====
Weighted average Common Stock outstanding --				diluted.....
27,010	27,408	31,252	=====	=====
===== COMPUTATION OF FUNDS AVAILABLE FOR				
DISTRIBUTION: Funds from				
operations.....	\$ 66,957	\$ 63,807	\$ 68,477	Non-revenue producing
improvements to real estate.....	(12,689)	(7,855)	(8,656)	Funds
available for distribution.....	\$ 54,268	\$ 55,952	\$ 59,821	=====
Weighted average Common Stock outstanding --				diluted.....
27,010	27,408	31,252	=====	=====
=====	=====	=====		

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE OF MARKET RISK

The Company's earnings are affected by changes in interest rates, as a portion of the Company's outstanding indebtedness is at variable rates based on LIBOR. The Company's \$150 million line of credit (\$16.3 million outstanding at December 31, 2001) bears interest at LIBOR plus 1.125% per annum and the Company's \$100 million Term Loan bears interest at LIBOR plus 1.0% per annum. If LIBOR increased/decreased by 1.0% during 2001, interest expense would have increased/decreased by approximately \$1.4 million based on the combined average balance outstanding under the Company's line of credit and Term Loan for the year ended December 31, 2001.

In July 1998, the Company entered into an interest rate swap agreement (the "1998 Swap") fixing LIBOR on \$100 million of the Company's floating rate debt at 6.4% for the period 1998 through 2003. The cost of the 1998 Swap consisted only of legal costs that were deemed immaterial. The value of the 1998 Swap was impacted by changes in the market rate of interest. Had the 1998 Swap been entered into on December 31, 1999, the applicable LIBOR swap rate would have been approximately 6.57%. Each 0.01% increase or decrease in the applicable swap rate for the 1998 Swap increases or decreases the value of the 1998 Swap versus its current value by approximately \$28,000. The Company accounted for the 1998 Swap as a hedge. Payments and receipts under the 1998 Swap were accounted for as an adjustment to interest expense. On January 10, 2000, the Company unwound the 1998 Swap and received \$1.0 million of proceeds which is amortized into interest expense through March 2003.

On October 29, 2001, the Company entered into an interest rate swap agreement, fixing LIBOR on \$100 million of the Company's floating rate debt at approximately 3.7% for the period October 2001 through August 2004. The terms of the swap require monthly settlements on the same dates that interest payments are due on the debt. In accordance with SFAS No. 133, the interest rate swap is reflected at market value. The Company believes the swap is a perfectly effective cash flow hedge per SFAS No. 133 and there will be no effect on net income as a result of the mark-to-market adjustment. The value of the hedge as of December 31, 2001 was approximately \$489,000 and is recorded as an asset and included in other assets. Mark-to-market change in the value of the swap are included in other comprehensive income.

In June 1998, the Financial Accounting Standards Board ("FASB") issued Statement No. 133 ("SFAS No. 133"), "Accounting for Derivative Instruments and Hedging Activities" and its amendments, Statements 137 and 138 in June 1999 and June 2000, respectively. SFAS No. 133 permits early adoption as of the beginning of any fiscal quarter after its issuance. In June 1999, the FASB issued Statement No. 137 which deferred the effective date of SFAS No. 133 to all fiscal quarters for fiscal years beginning after June 15, 2000. The Company adopted SFAS No. 133 effective January 1, 2001. SFAS No. 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See Index to Combined Financial Statements on page F-1 of this Form 10-K.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## PART III

## ITEMS 10, 11, 12, 13.

DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT, EXECUTIVE COMPENSATION, SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by Item 10, Item 11, Item 12, and Item 13 will be contained in a definitive proxy statement which the Registrant anticipates will be filed no later than April 28, 2002, and thus this Part has been omitted in accordance with General Instruction G(3) to Form 10-K.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENTS, SCHEDULES AND REPORTS ON FORM 8-K

(a) (1&2) See Index to Financial Statements and Schedules on page F-1 of this Form 10-K.

(3) Exhibits:

2(a)

Admission Agreement between Equity Financial and Management Co., Manufactured Home Communities, Inc. and MHC Operating Partnership

3.1(a)

Articles of Incorporation of

Manufactured Home Communities, Inc.

3.2(a) Articles of Amendment and Restatement of

Manufactured Home Communities, Inc.

3.3(g) Amended

Bylaws of Manufactured Home Communities, Inc.

4 Not applicable 9 Not applicable

10.1(a)

Amended and Restated

Agreement of Limited Partnership of MHC

Operating Limited

Partnership 10.2(a)

Agreement of Limited Partnership of MHC

Financing Limited

Partnership 10.3(a)

Agreement of Limited Partnership of MHC

Management Limited

Partnership 10.4(a)

Property Management and Leasing Agreement between MHC Financing

10.4(a)

Property Management and Leasing Agreement between MHC Financing

10.4(a)

Property Management and Leasing Agreement between MHC Financing

10.4(a)

Limited  
Partnership  
and MHC  
Management  
Limited  
Partnership  
10.5(a)  
Property  
Management  
and Leasing  
Agreement  
between MHC  
Operating  
Limited  
Partnership  
and MHC  
Management  
Limited  
Partnership  
10.6(a)  
Services  
Agreement  
between  
Realty  
Systems, Inc.  
and MHC  
Management  
Limited  
Partnership  
10.7(a) Rate  
Protection  
Agreement  
10.8(a)  
Revolving  
Credit Note  
made by  
Realty  
Systems, Inc.  
to Equity  
Financial and  
Management  
Co. 10.9(a)  
Assignment to  
MHC Operating  
Limited  
Partnership  
of Revolving  
Credit Note  
made by  
Realty  
Systems, Inc.  
to Equity  
Financial and  
Management  
Co. 10.10(a)  
Stock Option  
Plan  
10.11A(a)  
Indenture of  
Mortgage,  
Deed of  
Trust,  
Security  
Agreement,  
Financing  
Statement,  
Fixture  
Filing and  
Assignment of  
Rents  
10.11B(a)  
Promissory  
Note  
10.11C(a)  
Assignment of  
Loan  
Documents  
10.11D(a)  
Assignment of  
Leases, Rents  
and Security  
Deposits  
10.11E(a)  
Swap  
Agreement  
Pledge and

Security Agreement  
10.11F(a)  
Cash Collateral Account  
Security, Pledge and Assignment Agreement  
10.11G(a)  
Assignment of Property Management and Leasing Agreement  
10.11H(a)  
Trust Agreement  
10.12(a) Form of Noncompetition Agreement  
10.13(a) Form of Noncompetition Agreement  
10.13A(a) Form of Noncompetition Agreement  
10.14(a) General Electric Credit Corporation Commitment Letter  
10.15(a) Administrative Services Agreement between Realty Systems, Inc. and Equity Group Investments, Inc.  
10.16(a) Registration Rights and Lock-Up Agreement with the Company (the Original Owners, EF&M, Directors, Officers and Employees)  
10.17(a) Administrative Services Agreement between the Company and Equity Group Investments, Inc.  
10.18(a) Form of Subscription Agreement between the Company and certain officers and other individuals dated March 3, 1993  
10.19(a) Form of Secured Promissory Note payable to the Company by

certain  
officers  
dated March  
3, 1993  
10.20(a) Form  
of Pledge  
Agreement  
between the  
Company and  
certain  
officers  
dated March  
3, 1993  
10.21(a) Loan  
and Security  
Agreement  
between  
Realty  
Systems, Inc.  
and MHC  
Operating  
Limited  
Partnership  
10.22(a)  
Equity and  
Registration  
Rights  
Agreement  
with the  
Company (the  
GM Trusts)  
10.23(b)  
Agreement of  
Limited  
Partnership  
of MHC  
Lending  
Limited  
Partnership  
10.23(c)  
Agreement of  
Limited  
Partnership  
of MHC-Bay  
Indies  
Financing  
Limited  
Partnership  
10.24(c)  
Agreement of  
Limited  
Partnership  
of MHC-De  
Anza  
Financing  
Limited  
Partnership  
10.25(c)  
Agreement of  
Limited  
Partnership  
of MHC-DAG  
Management  
Limited  
Partnership  
10.26(d)  
Amendment No.  
2 to MHC  
Operating  
Limited  
Partnership  
Amended and  
Restated  
Partnership  
Agreement  
dated  
February 15,  
1996 10.27(d)  
Form of  
Subscription  
Agreement  
between the  
Company and  
certain  
members of  
management of

the Company  
dated January  
2, 1996

ITEM 14. EXHIBITS, FINANCIAL STATEMENTS, SCHEDULES AND REPORTS ON FORM 8-K  
(CONTINUED)

- 10.28(d) Form of Secured Promissory Note payable to the Company by certain members of management of the Company dated January 2, 1996
- 10.29(d) Form of Pledge Agreement between the Company and certain members of management of the Company dated January 2, 1996
- 10.30(e) Second Amended and Restated MHC Operating Limited Partnership Agreement of Limited Partnership, dated as of March 15, 1996
- 10.31(f) Agreement of Limited Partnership of MHC Financing Limited Partnership Two
- 10.32(g) \$265,000,000 Mortgage Note dated December 12, 1997
- 10.33(g) Second Amended and Restated Credit Agreement (Revolving Facility) between the Company, MHC Operating Limited Partnership, and certain lenders and agents, dated April 28, 1998
- 10.34(g) First Amendment to Second Amended and Restated Credit Agreement (Revolving Facility) between the Company, MHC Operating Limited Partnership, and certain lenders and agents, dated December 18, 1998
- 10.35(h) Second Amendment to Second Amended and Restated Credit Agreement (Revolving Facility) between the Company, MHC Operating Limited Partnership, and certain lenders and agents, dated August 9, 2000
- 10.36(g) Amended and Restated Credit Agreement (Term Loan) between the Company, MHC Operating Limited Partnership, and certain lenders and agent, dated April 28, 1998
- 10.36(h) First Amendment to Amended and Restated Credit Agreement (Term Loan) between the Company, MHC Operating Limited Partnership, and certain lenders and agent, dated November 21, 2000
- 10.36(g) Letter Agreement between the Company and Bank of America National Trust and Savings Association confirming the \$100 million swap transaction, dated July 11, 1995
- 10.39(h) \$110,000,000 Amended, Restated and Consolidated Promissory Note dated June 28, 2000
- 10.40(h) \$15,750,000 Promissory Note Secured by Leasehold Deed of Trust dated July 13, 2000
- 10.41(i) Credit Agreement (Term Loan) between the Company, MHC Operating Limited Partnership and certain lenders and agents dated February 9, 2002.
- 10.42(i) Third Amendment to Second Amended and Restated Credit Agreement (Revolving Facility) between the Company, MHC Operating Limited Partnership, and certain lenders and agents, dated February 9, 2002
- 10.43(i) \$50,000,000 Promissory Note secured by Leasehold Deeds of Trust (Stagecoach Mortgage) dated December 2, 2001.
- 11 Not applicable
- 12(i) Computation of Ratio of Earnings to Fixed Charges
- 13 Not applicable
- 16 Not applicable
- 18 Not applicable
- 21(i) Subsidiaries of the registrant
- 22 Not applicable
- 23(i) Consent of Independent Auditors
- 24.1(i) Power of Attorney for John F. Podjasek, Jr. dated March 27, 2002
- 24.2(i) Power of Attorney for Michael A. Torres dated March 19, 2002
- 24.3(i) Power of Attorney for Thomas E. Dobrowski dated March 15, 2002
- 24.4(i) Power of Attorney for Gary Waterman dated March 27, 2002
- 24.5(i) Power of Attorney for Donald S. Chisholm dated March 19, 2002
- 24.6(i) Power of Attorney for Louis H. Masotti dated March 15, 2002
- 27 Not applicable
- 28 Not applicable

(a) Included as an exhibit to the Company's Form S-11 Registration Statement, File No. 33-55994, and incorporated herein by reference.

(b) Included as an exhibit to the Company's Report on Form 10-K dated December 31, 1993, and incorporated herein by reference.

(c) Included as an exhibit to the Company's Report on Form 10-K dated December 31, 1994, and incorporated herein by reference.

(d) Included as an exhibit to the Company's Report on Form 10-Q for the quarter ended March 31, 1996, and incorporated herein by reference.



ITEM 14. EXHIBITS, FINANCIAL STATEMENTS, SCHEDULES AND REPORTS ON FORM 8-K  
(CONTINUED)

(e) Included as an exhibit to the Company's Report on Form 10-Q for the quarter ended June 30, 1996, and incorporated herein by reference.

(f) Included as an exhibit to the Company's Report on Form 10-K dated December 31, 1997, and incorporated herein by reference.

(g) Included as an exhibit to the Company's Form S-3 Registration Statement, File No. 333-90813, and incorporated herein by reference.

(h) Included as an exhibit to the Company's Report on Form 10-K dated December 31, 2000, and incorporated herein by reference.

(i) Filed herewith.

(b) Reports on Form 8-K:

None.

(c) Exhibits:

See Item 14(a)(3) above.

(d) Financial Statement Schedules:

See Index to Financial Statements attached hereto on page F-1 of this Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MANUFACTURED HOME COMMUNITIES, INC.,  
a Maryland corporation

Date: March 29, 2002  
-----

By: /s/           HOWARD WALKER  
-----

Howard Walker  
Chief Executive Officer

Date: March 29, 2002  
-----

By: /s/           JOHN ZOELLER  
-----

John Zoeller  
Executive Vice President, Treasurer  
and Chief Financial Officer

Date: March 29, 2002  
-----

By: /s/           MARK HOWELL  
-----

Mark Howell  
Principal Accounting Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

NAME TITLE  
DATE ----

-----  
/s/ HOWARD  
WALKER  
Chief  
Executive  
Officer  
March 29,  
2002 -----  
-----  
-----

\*Attorney-  
in-Fact --

-----  
-- Howard  
Walker /s/  
JOHN  
ZOELLER  
Vice  
President,  
Treasurer  
March 29,  
2002 -----  
-----  
-----

and Chief  
Financial  
Officer --

-----  
-- John  
Zoeller  
\*Attorney-  
in-Fact  
/s/ SAMUEL  
ZELL  
Chairman  
of the  
Board  
March 29,  
2002 -----  
-----  
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-----  
-- Samuel  
Zell /s/  
SHELI Z.  
ROSENBERG  
Director  
March 29,  
2002 -----  
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-----  
-- Sheli  
Z.  
Rosenberg  
/s/ DAVID  
A. HELFAND  
Director  
March 29,  
2002 -----  
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-----  
-- David  
A. Helfand  
\*DONALD S.  
CHISHOLM

Director  
March 29,  
2002 -----  
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-----  
-----  
-- Donald  
S.  
Chisholm  
\*THOMAS E.  
DOBROWSKI  
Director  
March 29,  
2002 -----  
-----  
-----  
-----  
-- Thomas  
E.  
Dobrowski  
\*LOUIS H.  
MASOTTI  
Director  
March 29,  
2002 -----  
-----  
-----  
-----  
-- Louis  
H. Masotti  
\*JOHN F.  
PODJASEK,  
JR.  
Director  
March 29,  
2002 -----  
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-----  
-- John F.  
Podjasek,  
Jr.  
\*MICHAEL  
A. TORRES  
Director  
March 29,  
2002 -----  
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-----  
-- Michael  
A. Torres  
\*GARY L.  
WATERMAN  
Director  
March 29,  
2002 -----  
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-----  
-- Gary L.  
Waterman

INDEX TO FINANCIAL STATEMENTS

MANUFACTURED HOME COMMUNITIES, INC.

PAGE ---- Report of Independent

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Certain schedules have been omitted as they are not applicable to the Company.

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors of Manufactured Home Communities, Inc.

We have audited the accompanying consolidated balance sheets of Manufactured Home Communities, Inc. as of December 31, 2001 and 2000, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2001. We have also audited the related financial statement schedules listed in the accompanying index. These financial statements and schedules are the responsibility of the management of Manufactured Home Communities, Inc. Our responsibility is to express an opinion on these financial statements and schedules based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Manufactured Home Communities, Inc. at December 31, 2001 and 2000, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States. Also, in our opinion, the related financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects the information set forth therein.

ERNST & YOUNG LLP

Chicago, Illinois  
January 29, 2002, except for Note 10  
as to which the date is February 8, 2002 and  
except for Note 18  
as to which the date is February 22, 2002

MANUFACTURED HOME COMMUNITIES, INC.  
CONSOLIDATED BALANCE SHEETS  
AS OF DECEMBER 31, 2001 and 2000  
(AMOUNTS IN THOUSANDS EXCEPT SHARE DATA)

2001	2000	
		ASSETS Investment in real estate:
Land.....		\$ 271,871 \$ 271,822 Land
improvements.....		855,296 839,725 Buildings and other depreciable property.....
		110,971 106,629 -----
		----- 1,238,138 1,218,176 Accumulated depreciation..... (211,878)
		(181,580) ----- Net investment in real estate.....
		1,026,260 1,036,596 Cash and cash equivalents.....
		1,354 2,847 Notes receivable.....
		1,506 4,984 Investment in and advances to affiliates.....
		34,387 21,215 Investment in joint ventures.....
		11,853 receivable.....
		13,267 Rents receivable.....
		1,966 1,440 Deferred financing costs, net.....
		5,867 6,344 Prepaid expenses and other assets.....
		16,770 17,611 ----- Total assets.....
\$1,099,963	\$1,104,304	===== LIABILITIES AND STOCKHOLDERS' EQUITY
		Liabilities: Mortgage notes payable.....
		\$ 590,371 \$ 556,578 Unsecured term loan.....
		100,000 Unsecured line of credit.....
		16,250 59,900 Other notes payable.....
		2,236 3,206 Accounts payable and accrued expenses.....
		23,000 23,822 Accrued interest payable.....
		4,582 5,116 Rents received in advance and security deposits.....
		5,133 5,184 Distributions payable.....
		12,062 11,100 Due to affiliates.....
		32 32 ----- Total liabilities.....
		753,666 764,938 Commitments and contingencies
		Minority Interest - Common OP Units and other.....
		46,147 46,271 Minority Interest -- Perpetual Preferred OP Units.....
		125,000 125,000 Stockholders' equity: Preferred stock, \$.01 par value
		10,000,000 shares authorized; none issued.....
		- -- Common Stock, \$.01 par value 50,000,000 shares authorized; 21,562,343 and 21,064,785 shares issued and outstanding for 2001 and 2000, respectively.....
		215 210 Paid-in capital.....
		245,827 235,681 Deferred compensation.....
		(4,062) (5,969) Employee notes.....
		(3,841) (4,205) Distributions in excess of accumulated earnings.....
		(63,478) (57,622) Accumulated other comprehensive income.....
		489 -- ----- Total stockholders' equity.....
		175,150 168,095 Total liabilities and stockholders' equity.....
		\$1,099,963 \$1,104,304 =====

The accompanying notes are an integral part of the financial statements  
F-3

MANUFACTURED HOME COMMUNITIES, INC.  
CONSOLIDATED STATEMENTS OF OPERATIONS  
FOR THE YEARS ENDED DECEMBER 31, 2001, 2000 AND 1999  
(AMOUNTS IN THOUSANDS EXCEPT PER SHARE DATA)

2001	2000	1999	-----	-----	REVENUES	Base
						rental
income.....						
	\$195,644	\$189,481	\$181,672			RV base rental
income.....	5,748					
	7,414	9,526				Utility and other
income.....				22,014		
	20,366	20,096				Equity in income of
affiliates.....	1,811	2,408				
		2,065				Interest
income.....						
	639	1,009	1,669			Total
revenues.....						
	225,856	220,678	215,028			
						EXPENSES
						Property operating and
maintenance.....				62,008	59,199	
				58,038		Real estate
taxes.....						
	17,420	16,888	16,460			Property
management.....						
	8,984	8,690	8,337			General and
administrative.....						
	6,231	5,955	5,550			General and administrative --
affiliates.....	456	468	542			Interest
and related amortization.....						
	51,305	53,280	53,775			Depreciation on corporate
assets.....				1,243	1,139	1,005
						Depreciation on real estate assets and other
costs.....	34,833	34,411	34,486			
						Total
expenses.....						
	182,480	180,030	178,193			
						Income from
operations.....						
	43,376	40,648	36,835			Gain on sale of Properties and
other.....	8,168	12,053				
						Income before allocation to
						Minority Interests and extraordinary loss on early
extinguishment of debt... 51,544	52,701	36,835	(Income)			allocated to Common OP Units.....
(8,209)	(8,463)	(6,219)	(Income) allocated to Perpetual			Preferred OP Units.....
(2,844)			(11,252)	(11,252)		
						Income before
						extraordinary loss on early extinguishment of
debt.....						
	32,083	32,986	27,772			Extraordinary loss on early
						extinguishment of debt (net of \$264 allocated to
Minority Interests).....				1,041		
						NET
INCOME.....						
	\$ 32,083	\$ 31,945	\$ 27,772			
Net income per Common Share before extraordinary item -						
- basic.....	\$					
	1.53	\$ 1.54	\$ 1.10			Net
income per Common Share before extraordinary item --						
diluted.....	\$					
	1.49	\$ 1.51	\$ 1.09			Net
income per Common Share --						
basic.....	\$ 1.53	\$ 1.49	\$ 1.10			
						Net income per Common Share
-- diluted.....	\$ 1.49	\$ 1.46	\$ 1.09			
						Weighted average Common
Shares outstanding -- basic.....	21,036	21,469				
25,224						Weighted average
Common Shares outstanding -- diluted (Note						
3).....						
	27,010	27,408	31,252			
						Distributions declared per Common Share
outstanding.....	\$ 1.78	\$ 1.66	\$ 1.55			
						Tax status of distributions paid
						during the year: Ordinary
income.....	\$					
	1.31	\$ 1.32	\$ 1.16			Capital
gain.....	\$ -					
						Return of
- \$ -- \$ --						capital.....
	0.44	\$ 0.31	\$ -			



The accompanying notes are an integral part of the financial statements

MANUFACTURED HOME COMMUNITIES, INC.  
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY  
FOR THE YEARS ENDED DECEMBER 31, 2001, 2000 AND 1999  
(AMOUNTS IN THOUSANDS)

2001	2000	1999	-----	-----	-----	PREFERRED
STOCK, \$.01 PAR VALUE.....						\$ -- \$
-- \$ --	=====	=====	=====	=====	=====	COMMON STOCK, \$.01 PAR
						VALUE Balance, beginning of
year.....						\$ 210 \$ 229 \$ 262
						Issuance of Common Stock through restricted stock
grants.....						1
						1 1 Exercise of
						options..... 4 1 1
						(Repurchase) issuance of Common
Stock.....						-- (21) (35) -----
						----- Balance, end of
year.....						\$ 215 \$ 210
						\$ 229 =====
						===== PAID -- IN CAPITAL
						Balance, beginning of
year.....						\$235,681 \$275,664
						\$364,603 Issuance of Common Stock for employee
notes.....						-- -- -- Conversion of OP Units to
						Common Stock..... 599 494 1,525 Issuance
						of Common Stock through exercise of options..... 7,743
						2,719 2,034 Issuance of Common Stock through restricted
						stock
grants.....						1,627 3,310 1,507 Issuance of Common Stock through
						employee stock purchase
plan.....						2,365 1,435 1,195 Repurchase of Common
						Stock..... -- (53,112)
						(98,160) Adjustment for Common OP Unitholders in the
						Operating
Partnership.....						(2,188) 5,171 2,960 -----
						----- Balance,
						end of year.....
						\$245,827 \$235,681 \$275,664 =====
						===== DEFERRED COMPENSATION Balance, beginning of
year.....						\$ (5,969) \$
						(6,326) \$ (7,442) Issuance of Common Stock through
						restricted stock
grants.....						(1,628) (3,311) (536) Recognition of deferred
						compensation expense..... 3,535 3,668 1,652 ----
						----- Balance, end of
year.....						\$ (4,062) \$
						(5,969) \$ (6,326) =====
						===== EMPLOYEE
						NOTES Balance, beginning of
year.....						\$ (4,205) \$
						(4,540) \$ (4,654) Notes received for issuance of Common
						Stock..... -- -- -- Principal
payments.....						364 335
						114 ----- Balance, end of
year.....						\$ (3,841) \$
						(4,205) \$ (4,540) =====
						===== DISTRIBUIONS IN EXCESS OF ACCUMULATED EARNINGS Balance,
						beginning of year.....
						\$(57,622) \$(53,626) \$(42,328) Net
income.....						32,083 31,945 27,772 Other comprehensive income:
						Unrealized holding gains on derivative instruments.....
						489 -- ----- Comprehensive
						income..... 32,572 31,945
						27,772 -----
Distributions.....						(37,939) (35,941) (39,070) -----
						----- Balance, end of
year.....						\$(62,989)
						\$(57,622) \$(53,626) =====

The accompanying notes are an integral part of the financial statements

MANUFACTURED HOME COMMUNITIES, INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31, 2001, 2000 AND 1999  
(AMOUNTS IN THOUSANDS)

2001	2000	1999	-----	-----	-----	CASH FLOWS
FROM OPERATING ACTIVITIES Net						
income.....						
\$ 32,083	\$ 31,945	\$ 27,772	Adjustments to reconcile net			
			income to cash provided by operating activities: Income			
			allocated to minority interests.....	19,461		
	19,451	9,063	Gain on sale of Properties and			
			other.....	(8,168)	(12,053)	--
			Depreciation and amortization expense.....			
37,184	36,511	33,871	Equity in income of affiliates and			
			joint ventures.....	(2,782)	(2,928)	(2,065)
			Amortization of deferred compensation and other.....			
	3,535	3,668	Increase in rents			
			receivable.....	(526)	(102)	(667)
			Decrease (increase) in prepaid expenses and other			
			assets.....	1,330	(9,389)	(844)
			(Decrease) increase in accounts			
			payable and accrued			
			expenses.....			
	(1,358)	2,545	2,491 (Decrease) increase in rents			
			received in advance and security			
			deposits.....	(51)	(1,647)	
336	-----	-----	Net cash provided by			
			operating activities.....	80,708	68,001	
72,580	-----	-----	CASH FLOWS FROM			
			INVESTING ACTIVITIES Contributions to and distributions			
			from Affiliates, net... (11,493) (7,250) (1,959)			
			Collections (funding) of notes			
			receivable.....	3,478	(700)	11,426
			Distribution from (investment in) joint			
			ventures.....	1,697	(3,758)	(2,279)
			Proceeds from			
			dispositions of assets.....	24,209		
46,490	--	(Funding) return of escrow for acquisition of				
		rental properties --				
			net.....	(17,770)		
	4,581	(30,640)	Improvements: Improvements --			
			corporate.....	(840)	(498)	
			(878) Improvements -- rental			
			properties.....	(12,689)	(7,855)	
			(8,656) Site development			
			costs.....	(9,659)	(7,908)	
	(4,882)	-----	Net cash (used			
			in) provided by investing activities.....	(23,067)		
	23,102	(37,868)	-----			
			CASH			
			FLOWS FROM FINANCING ACTIVITIES Net proceeds from stock			
			options and employee stock purchase			
			plan.....	10,112		
	4,142	3,229	Net proceeds from issuance of Perpetual			
			Preferred OP			
			Units.....			
	--	--	121,890 Distributions to Common Stockholders,			
			Common OP Unitholders and Perpetual Preferred OP			
			Unitholders.....	(58,111)	(56,298)	(40,445)
			Repurchase			
			of Common Stock and OP Units.....	(41)		
			(54,595) (99,847) Collection of principal payments on			
			employee notes.....	364	335	114
			Line of credit:			
			Proceeds.....	46,000	103,900	113,400
			Repayments.....			
			(89,650) (151,900) (150,500) Refinancing -- net			
			proceeds.....	37,870	65,998	
			16,248 Principal			
			payments.....			
			(5,047) (4,249) (4,733) Debt issuance			
			costs.....	(631)		
	(2,265)	(1,049)	-----			
			Net cash			
			used in financing activities.....			
	(59,134)	(94,932)	(41,693) -----			
			- Net (decrease) in cash and cash			
			equivalents.....	(1,493)	(3,829)	(6,981)
			Cash and cash equivalents, beginning of			
			year.....	2,847	6,676	13,657
			-----			
			Cash and cash equivalents, end of			
			year.....	\$ 1,354	\$ 2,847	\$ 6,676
=====	=====	=====	SUPPLEMENTAL INFORMATION			
			Cash paid during the year for			

interest..... \$ 50,781 \$ 52,947 \$  
52,323 ===== ===== =====

The accompanying notes are an integral part of the financial statements

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 -- ORGANIZATION OF THE COMPANY AND BASIS OF PRESENTATION

Manufactured Home Communities, Inc. (together with its consolidated subsidiaries, the "Company"), formed in March 1993, is a Maryland corporation which has elected to be taxed as a real estate investment trust ("REIT"). The Company owns or has a controlling interest in 148 manufactured home communities (the "Properties") located in 23 states, consisting of 50,761 sites. The Company generally will not be subject to Federal income tax to the extent it distributes its REIT taxable income to its stockholders.

The operations of the Company are conducted through certain entities that are owned or controlled by the Company. MHC Operating Limited Partnership (the "Operating Partnership") is the entity through which the Company conducts substantially all of its operations. The Company contributed the proceeds from its initial public offering to the Operating Partnership for a general partnership interest. The limited partners of the Operating Partnership (the "Common OP Unitholders") receive an allocation of net income which is based on their respective ownership percentage of the Operating Partnership which is shown on the Consolidated Financial Statements as Minority Interests -- Common OP Units. As of December 31, 2001, the Minority Interests -- Common OP Units represented 5,426,374 units of limited partnership interest ("OP Units") which are convertible into an equivalent number of shares of the Company's Common stock. The issuance of additional shares of common stock or common OP Units changes the respective ownership of the Operating Partnership for both the Minority Interests and the Company.

Subsidiaries of the Operating Partnership have been created to (i) facilitate mortgage financing (the "Financing Partnerships"); (ii) facilitate the Company's ability to provide financing to owners of manufactured home communities ("Lending Partnership"); (iii) own the management operations of the Company ("Management Partnership"); and (iv) own the assets and operations of certain utility companies which service the Company's Properties ("MHC Systems").

The accompanying financial statements represent the consolidated financial information of the Company and its subsidiaries. Due to the Company's ability as general partner to control either through ownership or by contract the Operating Partnership, the Financing Partnerships, the Lending Partnership, the Management Partnership and MHC Systems, each such subsidiary has been consolidated with the Company for financial reporting purposes.

Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS No. 131") requires certain disclosures of selected information about operating segments in the annual financial statements and related disclosures about products and services, geographic areas, and major customers. The adoption of SFAS No. 131, in June 1998, did not affect the results of operations or financial position of the Company. The Company manages operations on a property by property basis. Since each property has similar economic and operational characteristics, the Company has one reportable segment, which is the operation of manufactured home communities. The Company has concentrations of Properties within the following states: Florida (49 Properties), California (25 Properties), Arizona (17 Properties), Michigan (11 Properties) and Colorado (10 Properties). These concentrations of Properties accounted for 36%, 19%, 8%, 4% and 8%, respectively, of the Company's total revenues for the year ended December 31, 2001. The Company also has Properties located in the following areas of the United States: Northeast, Northwest, Midwest, and Nevada/Utah/New Mexico. The Company's largest Property, Bay Indies, located in Venice, Florida, accounted for 3% of the Company's total revenues for the year ended December 31, 2001. The distribution of the Properties throughout the United States reflects the Company's belief that geographic diversification helps insulate the portfolio from regional economic influences. The Company intends to target new acquisitions in or near markets where the Properties are located and will also consider acquisitions of properties outside such markets.

NOTE 2 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of Consolidation

The Company consolidates all majority owed subsidiaries due to its ability to control the operations of the subsidiaries. All inter-company transactions have been eliminated in consolidation.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(b) Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(c) Real Estate

Real estate is recorded at cost less accumulated depreciation. The Company evaluates rental Properties for impairment when conditions exist which may indicate that it is probable that the sum of expected future cash flows (undiscounted) from a Property is less than its carrying value. Upon determination that a permanent impairment has occurred, rental Properties are reduced to fair value. For the year ended December 31, 2001, permanent impairment conditions did not exist at any of the Company's Properties. During the year ended December 31, 2000, MHC Acquisition One L.L.C., a consolidated subsidiary of the Company, recorded an impairment loss on the DeAnza Santa Cruz water and wastewater service company business (see Notes 5 and 17). In August 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment of Long-Lived Assets" which is effective for fiscal years beginning after December 15, 2001. The application of the provisions of this Statement is not expected to affect the earnings and financial position of the Company.

Certain costs, including legal costs, relative to efforts by the Company to effectively change the use and operations of several Properties are currently recorded in other assets. These costs, to the extent these efforts are successful, are capitalized to the extent of the established value of the revised project and included in the net investment in real estate for the appropriate Properties. To the extent these efforts are not successful, these costs will be expensed.

Depreciation is computed on the straight-line basis over the estimated useful lives of the assets. The Company uses a 30-year estimated life for buildings acquired and structural and land improvements, a ten-to-fifteen-year estimated life for building upgrades and a three-to-seven-year estimated life for furniture, fixtures and equipment. Expenditures for ordinary maintenance and repairs are expensed to operations as incurred and significant renovations and improvements that improve the asset and extend the useful life of the asset are capitalized over their estimated useful life. Initial direct leasing costs are expensed as incurred. Total depreciation expense was \$36.1 million, \$35.6 million and \$35.5 million for the years ended December 31, 2001, 2000 and 1999, respectively.

(d) Cash and Cash Equivalents

The Company considers all demand and money market accounts and certificates of deposit with a maturity when purchased of three months or less to be cash equivalents.

(e) Notes Receivable

Notes receivable generally are stated at their outstanding unpaid principal balances net of any deferred fees or costs on originated loans, or unamortized discounts or premiums. Interest income is accrued on the unpaid principal balance. Discounts or premiums are amortized to income using the interest method.

(f) Fair Value of Financial Instruments

Statement of Financial Accounting Standards No. 107, "Disclosures About Fair Value of Financial Instruments" requires disclosures about the fair value of financial instruments whether or not such instruments are recognized in the balance sheet. The Company's financial instruments include short-term investments, notes receivable, accounts receivable, accounts payable, other accrued expenses, mortgage notes payable and interest rate hedge arrangements. The fair values of all financial instruments, including notes receivable, were not materially different from their carrying values at December 31, 2001 and 2000.

NOTE 2 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

(g) Deferred Financing Costs

Deferred financing costs include fees and costs incurred to obtain long-term financing. The costs are being amortized over the terms of the respective loans on a level yield basis. Unamortized deferred financing fees are written-off when debt is retired before the maturity date. Accumulated amortization for such costs was \$3.0 million and \$1.9 million at December 31, 2001 and 2000, respectively.

(h) Revenue Recognition

Rental income attributable to leases is recorded when earned from tenants. The Company will reserve for receivables when the Company believes the ultimate collection is less than probable.

(i) Minority Interests

Net income is allocated to Common OP Unitholders based on their respective ownership percentage of the Operating Partnership. An ownership percentage is represented by dividing the number of Common OP Units held by the Common OP Unitholders (5,426,374 and 5,514,330 at December 31, 2001 and 2000, respectively) by OP Units and Common Stock outstanding. Issuance of additional shares of Common Stock or common OP Units changes the percentage ownership of both the Minority Interests and the Company. Due in part to the exchange rights (which provide for the conversion of Common OP Units into Common Stock on a one-for-one basis), such transactions and the proceeds therefrom are treated as capital transactions and result in an allocation between stockholders' equity and Minority Interests to account for the change in the respective percentage ownership of the underlying equity of the Operating Partnership.

On September 30, 1999, the Operating Partnership completed a \$125 million private placement of 9.0% Series D Cumulative Perpetual Preferred Units ("POP Units") with two institutional investors. The POP Units, which are callable by the Company after five years, have no stated maturity or mandatory redemption, have no voting rights and are not convertible into OP Units or Common Stock. Income is allocated to the POP Units at a preferred rate per annum of 9.0% on the original capital contribution of \$125 million. Costs related to the placement of \$3.1 million were recorded as a reduction to additional paid-in capital.

(j) Income Taxes

Due to the structure of the Company as a REIT, the results of operations contain no provision for Federal income taxes. However, the Company may be subject to certain state and local income, excise or franchise taxes. The Company paid state and local taxes of approximately \$50,000, \$78,000 and \$85,000 during the years ended December 31, 2001, 2000 and 1999, respectively. As of December 31, 2001, net investment in real estate and notes receivable had a Federal tax basis of approximately \$710 million and \$20 million, respectively.

(k) Derivative Instruments and Hedging Activities

In June 1998, the Financial Accounting Standards Board ("FASB") issued Statement No. 133 ("SFAS No. 133"), "Accounting for Derivative Instruments and Hedging Activities" and its amendments, Statements 137 and 138 in June of 1999 and June of 2000, respectively. The Company adopted SFAS No. 133 effective January 1, 2001. SFAS No. 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. On October 29, 2001, the Company entered into a swap agreement. (see Note 10)

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 -- EARNINGS PER COMMON SHARE

Earnings per common share are based on the weighted average number of common shares outstanding during each year. Statement of Financial Accounting Standards No. 128, "Earnings Per Share" ("SFAS No. 128") defines the calculation of basic and fully diluted earnings per share. Basic and fully diluted earnings per share are based on the weighted average shares outstanding during each year and basic earnings per share excludes any dilutive effects of options, warrants and convertible securities. The conversion of OP Units has been excluded from the basic earnings per share calculation. The conversion of an OP Unit to a share of common stock has no material effect on earnings per common share.

The following table sets forth the computation of basic and diluted earnings per share for the years ended December 31, 2001, 2000, 1999 (amounts in thousands):

2001	2000	1999	-----	-----	-----	NUMERATOR:
Numerator for basic earnings per share -- Net						
income.....						
\$32,083	\$31,945	\$27,772	Effect of dilutive			
securities: Income allocated to Common OP Units						
(net of extraordinary loss on early extinguishment						
of						
debt).....						
8,209	8,199	6,219	-----	-----	-----	
Numerator for diluted earnings per share -- Income						
available to Common Stockholders After assumed						
conversions.....						
\$40,144	\$33,991	=====	=====	=====	=====	\$40,292
DENOMINATOR: Denominator for basic earnings per						
share -- Weighted average Common Stock						
outstanding.....						
25,224	21,036	21,469				
Effect of dilutive securities: Weighted						
average Common OP Units.....						
5,466	5,592	5,704	Employee stock			
options.....	508	347	324	-		
----- Denominator for diluted						
earnings per share -- Adjusted weighted average						
Common Stock Outstanding after assumed						
conversions.....	27,010	27,408				
31,252	=====	=====	=====			

NOTE 4 -- COMMON STOCK AND OTHER EQUITY RELATED TRANSACTIONS

The following table presents the changes in the Company's outstanding Common Stock for the years ended December 31, 2001, 2000 and 1999 (excluding OP Units of 5,426,374, 5,514,330 and 5,633,183 outstanding at December 31, 2001, 2000 and 1999, respectively):

2001	2000	1999	-----	-----
----- Shares				
outstanding at January				
1,.....				
21,064,785	22,813,357			
26,417,029 Common Stock issued				
through conversion of OP				
Units.....	87,956	59,190		
143,637 Common Stock issued				
through exercise of				
Options.....	387,115			
138,029 126,565 Common Stock				
issued through stock				
grants.....				
57,000	92,070	95,666	Common	
Stock issued through Employee				
Stock Purchase Plan....				
98,987				
68,739 59,060 Common Stock				
repurchased and				
retired.....				
(133,500)	(2,106,600)			
(4,028,600)	-----	-----	-----	
----- Shares				
outstanding at December				
31,.....				
21,562,343	21,064,785			
22,813,357	=====	=====	=====	
=====	=====	=====		



As of December 31, 2001, the Company's percentage ownership of the Operating Partnership was approximately 80%. The remaining 20% is owned by the Common OP Unitholders.



2000 March  
 31, 2000  
 April 14,  
 2000  
 \$0.4150  
 June 30,  
 2000 June  
 30, 2000  
 July 14,  
 2000  
 \$0.4150  
 September  
 30, 2000  
 September  
 29, 2000  
 October 13,  
 2000  
 \$0.4150  
 December  
 31, 2000  
 December  
 29, 2000  
 January 12,  
 2001 - ----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 --- \$0.4450  
 March 31,  
 2001 March  
 30, 2001  
 April 13,  
 2001  
 \$0.4450  
 June 30,  
 2001 June  
 29, 2001  
 July 13,  
 2001  
 \$0.4450  
 September  
 30, 2001  
 September  
 28, 2001  
 October 12,  
 2001  
 \$0.4450  
 December  
 31, 2001  
 December  
 28, 2001  
 January 11,  
 2002 - ----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 ---

The Operating Partnership pays distributions of 9.0% per annum on the \$125 million of POP Units. Distributions on the POP Units were paid quarterly on the last calendar day of each quarter beginning December 31, 1999.

The Company adopted, effective July 1, 1997, the 1997 Non-Qualified Employee Stock Purchase Plan ("ESPP"). Pursuant to the ESPP, certain employees and directors of the Company may each annually acquire up to \$250,000 of Common Stock of the Company. The aggregate number of shares of Common Stock available under the ESPP shall not exceed 1,000,000, subject to adjustment by the Board of Directors. The Common Stock may be purchased monthly at a price equal to 85% of the lesser of: (a) the closing price for a share of Common Stock on the last day of such month; and (b) the greater of: (i) the closing price for a share of Common Stock on the first day of such month, and (ii) the average closing price for a share of Common Stock for all the business days in the month. Shares of Common Stock issued through the ESPP for the years ended December 31, 2001, 2000 and 1999 were 96,485, 68,739 and 59,060, respectively.



NOTE 5 -- INVESTMENT IN REAL ESTATE

Land improvements consist primarily of improvements such as grading, landscaping and infrastructure items such as streets, sidewalks or water mains. Depreciable property consists of permanent buildings in the Properties such as clubhouses, laundry facilities, maintenance storage facilities, and furniture, fixtures and equipment.

On September 4, 1997, the Company entered into a portfolio purchase agreement (as amended by a supplemental agreement on December 17, 1997) to acquire 37 manufactured home communities (the "Ellenburg Communities") from partnerships having Ellenburg Capital Corporation ("ECC") as the general partner, for a purchase price in excess of \$300 million. During 1997 and 1998, the Company closed on the acquisition of 31 of the Ellenburg Communities for an aggregate purchase price of approximately \$278 million and gained control of an additional five Ellenburg Communities with acquisition advances of approximately \$57 million to the partnerships which owned such Ellenburg Communities. All fundings related to the acquisition were funded by the Company with borrowings under the Company's line of credit, term bank facilities, assumed debt and the issuance of Common OP Units.

During 1998, the Company received approximately \$14.3 million, including approximately \$365,000 of interest income, which was being held subject to the completion of due diligence procedures on the Ellenburg Communities. The \$14.3 million was initially recorded as a liability until 1999 when a settlement of certain related issues was substantially complete and accordingly, in a non-cash transaction, relieved the liability and adjusted the purchase price of the Ellenburg Communities.

In April 2000, the California Superior Court approved a settlement agreement (the "Settlement") in connection with the dissolution proceeding of ECC and its affiliated partnerships. As part of the Settlement, the Company received \$13.5 million previously held in escrow in connection with the purchase of the Ellenburg Communities and recorded \$3.0 million of interest income related to these funds. In connection with the Settlement, the Company sold three communities -- Mesa Regal RV Resort, Mon Dak and Naples Estates -- for an aggregate sales price of \$59.0 million, including cash proceeds of \$40.0 million and assumption of debt by the purchaser of \$19.0 million. The Company recorded a \$9.1 million gain on the sale of these Properties. Proceeds from the Settlement and property sales were used to pay down the Company's line of credit. See Note 17 for further discussion of the Settlement.

On January 6, 1998, the Company funded a \$12.3 million loan (the "Meadows Loan") to Meadows Preservation, Inc. The Meadows Loan was collateralized by The Meadows manufactured home community located in Palm Beach Gardens, Florida. On April 1, 1999, the Company effectively exchanged the Meadows Loan for an equity and debt interest in the partnership that owns The Meadows. The Company includes The Meadows in investment in real estate and the related results of operations in the statement of operations.

On July 23, 1999, the Company acquired Coquina Crossing, located in St. Augustine, Florida, for a purchase price of approximately \$10.4 million. The acquisition was funded with a borrowing under the Company's line of credit. Coquina Crossing is a 748-site senior community with 269 developed sites and zoned expansion potential for 479 sites. In addition, Realty Systems, Inc. purchased the model home inventory at the community for approximately \$1.1 million.

In March 2000, in accordance with SFAS No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed of ", MHC Acquisition One L.L.C., a consolidated subsidiary of the Company, recorded an impairment loss on the DeAnza Santa Cruz water and wastewater service company business. Management's estimates indicated that the undiscounted future cash flows from the business would be less than the carrying value of the business and its related assets. The Company recorded an asset impairment loss of \$701,000 (or \$0.03 per fully diluted share) which is included as a reduction of other income in the accompanying statement of operations for the year ended December 31, 2000. This loss represents the difference between the carrying value of the DeAnza Santa Cruz water and wastewater service company business and its related assets and their estimated fair market value.

On February 29, 2000, MHC Systems, Inc., a consolidated subsidiary of the Company, disposed of the water and wastewater service company known as FFEC-Six in a cash sale. Net proceeds from the sale of approximately \$4.2 million were used to pay down the Company's line of credit and a gain on the sale of \$719,000 (or \$0.03 per fully diluted share) was recorded in other income on the accompanying statement of operations for the year ended December 31, 2000.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 5 -- INVESTMENT IN REAL ESTATE (CONTINUED)

On January 3, 2001, the Company acquired two Florida communities, totaling 730 sites, for an aggregate purchase price of approximately \$17.3 million. The Lakes at Countrywood is a 422-site community in Plant City, near Tampa, Florida and includes approximately 23 acres for expansion. Grand Island is a 308-site community in Grand Island, near Orlando, Florida, and includes a marina with 50 boat docks. The acquisition was funded with a borrowing under the Company's line of credit.

On February 13, 2001, the Company completed the disposition of the following seven communities, totaling 1,281 sites, in Kansas, Missouri and Oklahoma, for a total sale price of approximately \$17.4 million:

Dellwood Estates.....	136 sites
Briarwood.....	166 sites
Bonner Springs.....	211 sites
Carriage Park.....	143 sites
North Star.....	219 sites
Quivira Hills.....	142 sites
Rockwood.....	264 sites

A gain of \$8.1 million was recorded on the sale. Proceeds from the sale were used to reduce the amount outstanding on the Company's line of credit.

Effective June 30, 2001, the Company terminated its lease to a third-party operator for the campground and RV resort facilities at the Property known as Bulow Plantation in Flagler Beach, Florida, and assumed operation of these facilities directly. Beginning July 1, 2001 the Company no longer records lease income from Bulow RV Resort, however, the results of operations for Bulow RV Resort are included in the Company's results of operations.

On October 5, 2001, the Company finalized a settlement agreement between MHC Lending Partnership, the Operating Partnership and the limited liability company which owns Candlelight in Columbus, Indiana. In 1996, the Company funded a recourse loan to the owner of Candlelight Village and accounted for the loan as an investment in real estate. The Company received \$10.8 million in proceeds from the settlement, which was accounted for as a sale of real estate and recorded a \$75,000 gain on the sale. Proceeds from the sale were used as working capital.

The acquisitions have been accounted for utilizing the purchase method of accounting and, accordingly, the results of operations of acquired assets are included in the statements of operations from the dates of acquisition. The Company acquired all of the Properties from unaffiliated third parties.

During the year ended December 31, 2001, the Company capitalized approximately \$2.4 million of costs, including legal costs, relative to efforts by the Company to effectively change the use and operations of several Properties which are currently recorded in other assets. These costs will be expensed if management determines these efforts will not be successful.

The Company is actively seeking to acquire additional manufactured home communities and currently is engaged in negotiations relating to the possible acquisition of a number of communities. At any time these negotiations are at varying stages which may include contracts outstanding to acquire certain manufactured home communities which are subject to satisfactory completion of the Company's due diligence review.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 6 -- INVESTMENT IN JOINT VENTURE

On March 18, 1998, the Company joined Plantation Company, L.L.C. and Trails Associates, L.L.C., two 50% joint venture investments with the principals of Meadows Management Company, to own two manufactured home communities known as "Plantation on the Lake" and "Trails West", for approximately \$6.5 million. Plantation on the Lake is located in Riverside, California and consists of 385 developed sites and 122 expansion sites. Trails West is located in Tucson, Arizona and consists of 488 developed sites. The Company's investments were funded with a \$3.9 million borrowing under the Company's line of credit and with the issuance of approximately \$2.6 million in OP Units.

On December 28, 2000, the Company, through a joint venture with the principals of Meadows Management Company (the "Voyager Joint Venture"), acquired a 25% interest in Voyager RV Resort, a 1,576 site RV resort in Tucson, Arizona, for total consideration of \$4.0 million. Voyager RV Resort is adjacent to Trails West. The Company's investment included cash of \$3.0 million and its 50% interest in land held through the Trails West joint venture valued at \$2.0 million.

Due to the Company's inability to control the joint ventures, the Company accounts for its investment in the joint ventures using the equity method of accounting. The Company recorded approximately \$283,000 and \$8,000 of net income from joint ventures in the years ended December 31, 2001 and 2000, respectively; and received approximately \$1.6 million and \$400,000 in distributions.

NOTE 7 -- INVESTMENT IN AND ADVANCES TO AFFILIATES

Investment in and advances to affiliates consists principally of preferred stock of Realty Systems, Inc. ("RSI") and its subsidiaries (collectively "Affiliates") and advances under a line of credit between the Company and RSI. The Company accounts for the investment in and advances to Affiliates using the equity method of accounting.

Following is unaudited financial information for the Affiliates for the years ended December 31, 2001 and 2000 (amounts in thousands):

2001	2000
-----	-----
Assets \$	
51,619	\$
37,501	
Liabilities,	
net of	
amounts due	
to the	
Company	
(17,232)	
(16,286)	--
-----	-----
---- Net	
investment	
in	
Affiliates	
\$ 34,387	\$
21,215	
=====	
Home sales	
\$ 38,621	\$
39,952	Cost
of sales	
(30,657)	
(31,837)	
Other	
revenues	
and	
expenses,	
net (6,153)	
(5,707)	---
-----	-----
--- Equity	
in income	
of	
Affiliates	
\$ 1,811	\$
2,408	
=====	
=====	





MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8 -- NOTES RECEIVABLE

At December 31, 2001 and 2000, the Company had approximately \$1.5 million and \$5.0 million in notes receivable, respectively.

On May 12, 1998, the Company entered into an agreement to loan \$5.9 million to Trails Associates, L.L.C. (the "Trails West Loan") for development of the Property known as Trails West. Subsequently, the Company funded \$3.2 million under the Trails West Loan. In December 2000, \$1.2 million of the Trails West Loan was repaid and during 2001, the remaining balance on the Trails West Loan was repaid.

On December 28, 2000, the Company, in connection with the Voyager Joint Venture, entered into an agreement to loan \$3.0 million to certain principals of Meadows Management Company. The notes are collateralized with a combination of Common OP Units and partnership interests in this and other joint ventures. The notes bear interest at prime plus 0.5% per annum, require quarterly interest payments and mature on December 31, 2011. The outstanding balance on these notes as of December 31, 2001 is \$1.5 million.

NOTE 9 -- EMPLOYEE NOTES RECEIVABLE

As of December 31, 2001 and 2000, the Company had employee notes receivable of approximately \$3.8 million and \$4.2 million respectively, collateralized by the Company's Common Stock. These notes are presented as a reduction of Stockholder's Equity.

In December 1992, certain directors, officers and other individuals each entered into subscription agreements with the Company to acquire a total of 440,000 shares of the Company's common stock at \$7.25 per share. The Company received from these individuals notes (the "1993 Employee Notes") in exchange for their shares. The 1993 Employee Notes accrue interest at 6.77% per annum, mature on March 2, 2003, and are recourse against the employees in the event the pledged shares are insufficient to repay the obligations.

On January 2, 1996, certain members of management of the Company entered into subscription agreements with the Company to acquire a total of 270,000 shares of the Company's Common Stock at \$17.375 per share, the market price on that date. The Company received from these individuals notes (the "1996 Employee Notes") in exchange for their shares. The 1996 Employee Notes accrue interest at 5.91% per annum, mature on January 2, 2005, and are recourse against the employees in the event the pledged shares are insufficient to repay the obligations.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 -- LONG-TERM BORROWINGS

As of December 31, 2001 and December 31, 2000, the Company had outstanding mortgage indebtedness of approximately \$590.4 million and \$556.6 million, respectively, encumbering 77 and 73 of the Company's Properties, respectively. As of December 31, 2001 and December 31, 2000, the carrying value of such Properties was approximately \$693 million and \$631 million, respectively.

On August 3, 2001, the Company entered into a \$50.0 million mortgage note (the "Stagecoach Mortgage") collateralized by 7 Properties. The proceeds were used to repay amounts under the Company's line of credit and for working capital purposes.

The outstanding mortgage indebtedness as of December 31, 2001 consists of:

- A \$265.0 million mortgage note (the "\$265 Million Mortgage") collateralized by 29 Properties beneficially owned by MHC Financing Limited Partnership. The \$265 Million Mortgage has a maturity date of January 2, 2028 and pays interest at 7.015%. There is no principal amortization until February 1, 2008, after which principal and interest are to be paid from available cash flow and the interest rate will be reset at a rate equal to the then 10-year U.S. Treasury obligations plus 2.0%. The \$265 Million Mortgage is presented net of a settled hedge of \$3.0 million (net of accumulated amortization of \$137,000) which is being amortized into interest expense over the life of the loan.
- A \$65.9 million mortgage note (the "College Heights Mortgage") collateralized by 18 Properties. The College Heights Mortgage bears interest at a rate of 7.19%, amortizes beginning July 1, 1999 over 30 years and matures July 1, 2008.
- A \$93.0 million mortgage note (the "DeAnza Mortgage") collateralized by 6 Properties beneficially owned by MHC-DeAnza Financing Limited Partnership. The DeAnza Mortgage bears interest at a rate of 7.82%, amortizes beginning August 1, 2000 over 30 years and matures July 1, 2010.
- A \$49.9 million mortgage note (the "Stagecoach Mortgage") collateralized by 7 Properties beneficially owned by MHC Stagecoach L.L.C. The Stagecoach Mortgage bears interest at a rate of 6.98%, amortizes beginning September 1, 2001 over 10 years and matures September 1, 2011.
- A \$22.5 million mortgage note (the "Bay Indies Mortgage") collateralized by one Property beneficially owned by MHC-Bay Indies Financing Limited Partnership. The Bay Indies Mortgage bears interest at a rate of 7.48%, amortizes beginning August 1, 1994 over 27.5 years and matures July 1, 2004.
- A \$15.6 million mortgage note (the "Date Palm Mortgage") collateralized by one Property beneficially owned by MHC Date Palm, L.L.C. The Date Palm Mortgage bears interest at a rate of 7.96%, amortizes beginning August 1, 2000 over 30 years and matures July 1, 2010.
- Approximately \$78.5 million of mortgage debt on 15 other various Properties, which was recorded at fair market value with the related discount or premium being amortized over the life of the loan using the effective interest rate. Scheduled maturities for the outstanding indebtedness are at various dates through November 30, 2020, and fixed interest rates range from 7.15% to 8.75%. Included in this debt, the Company has a \$2.4 million loan recorded to account for a direct financing lease entered into in May 1997.

On August 9, 2000, the Company amended its unsecured line of credit with a group of banks (the "Credit Agreement") bearing interest at the London Interbank Offered Rate ("LIBOR") plus 1.125%. Among other things, the amendment lowered the total facility under the Credit Agreement to \$150 million and extended the maturity to August 9, 2003. The Company pays a quarterly fee on the average unused amount of such credit equal to 0.15% of such amount. As of December 31, 2001, \$133.8 million was available under the Credit Agreement.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 -- LONG-TERM BORROWINGS (CONTINUED)

The Company has a \$100 million unsecured term loan (the "Term Loan") with a group of banks with interest only payable monthly at a rate of LIBOR plus 1.0%. The Term Loan maturity has been extended to April 3, 2002. On February 8, 2002, the Company entered into a term loan credit agreement with the same group of banks, which extended the Term Loan to August 9, 2005.

On October 29, 2001, the Company entered into an interest rate swap agreement, fixing at LIBOR on \$100 million of the Company's floating rate debt at approximately 3.7% for the period October 2001 through August 2004. The terms of the swap require monthly settlements on the same dates interest payments are due on the debt. In accordance with SFAS No. 133, the interest rate swap will be reflected at market value. The Company believes the swap is a perfectly effective cash flow hedge under SFAS No. 133 and there will be no effect on net income as a result of the mark-to-market adjustment. As of December 31, 2001 the swap had a market value of \$489,000 which is included in other assets. The effect of the mark-to-market adjustment, is reflected in other comprehensive income.

In July 1998, the Company entered into an interest rate swap agreement (the "1998 Swap") fixing LIBOR on \$100 million of the Company's floating rate debt at 6.4% for the period 1998 through 2003. The value of the 1998 Swap was impacted by changes in the market rate of interest. The Company accounted for the 1998 Swap as a hedge. Payments and receipts under the 1998 Swap were accounted for as an adjustment to interest expense. On January 10, 2000, the Company terminated the 1998 Swap and received \$1.0 million of proceeds which is being amortized as an adjustment to interest expense through March 2003.

The Company has approximately \$2.2 million of installment notes payable, secured by a letter of credit, each with an interest rate of 6.5%, maturing September 1, 2002. Approximately \$900,000 of the notes pay principal annually and interest quarterly and the remaining \$1.3 million of the notes pay interest only quarterly.

Aggregate payments of principal on long-term borrowings for each of the next five years and thereafter are as follows (amounts in thousands):

YEAR	AMOUNT ---
-----	-----
2002 \$	6,190
2003	30,275
2004	33,231
2005	109,018
2006	20,384
Thereafter	509,759 --
-----	-----
Total	\$708,857
=====	=====

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 11 -- LEASE AGREEMENTS

The leases entered into between the tenant and the Company for the rental of a site are month-to-month or for a period of one to ten years, renewable upon the consent of the parties or, in some instances, as provided by statute. Noncancelable long-term leases are in effect at certain sites within 22 of the Properties. Rental rate increases at these Properties are primarily a function of increases in the Consumer Price Index, taking into consideration certain floors and ceilings. Additionally, periodic market rate adjustments are made as deemed necessary. Future minimum rents are scheduled to be received under noncancelable tenant leases at December 31, 2001 as follows (amounts in thousands):

YEAR	AMOUNT ---
-----	-----
2002 \$	
41,906	
2003	
29,654	
2004	
26,574	
2005	
25,339	
2006	
17,372	
Thereafter	
45,120 ---	
-----	
Total	
\$185,965	
=====	

NOTE 12 -- GROUND LEASES

The Company leases land under noncancellable operating leases at certain of the Properties expiring in various years from 2022 to 2031 with terms which require twelve equal payments per year plus additional rents calculated as a percent of gross revenues. For the years ended December 31, 2001, 2000 and 1999, ground lease rent was \$1.6 million. Minimum future rental payments under the ground leases are \$1.6 million for each of the next five years and \$27.9 million thereafter.

NOTE 13 -- TRANSACTIONS WITH RELATED PARTIES

Equity Group Investments, Inc. ("EGI"), an entity controlled by Mr. Samuel Zell, Chairman of the Board of Directors, and certain of its affiliates have provided services such as administrative support, investor relations, corporate secretarial, real estate tax evaluation services, market consulting and research services. Fees paid to EGI and its affiliates amounted to approximately \$2,000, \$26,000 and \$74,000 for the years ended December 31, 2001, 2000 and 1999, respectively. There were no significant amounts due to these affiliates as of December 31, 2001 and 2000, respectively.

Certain related entities, owned by persons affiliated with Mr. Zell, have provided services to the Company. These entities include, but are not limited to, Rosenberg & Liebenritt, P.C. which provided legal services including property acquisition services in 1999; The Riverside Agency, Inc. which provided insurance brokerage services. In addition, Equity Office Properties Trust, of which Mr. Zell is the Chairman of the Board, provides office space to the Company. Fees paid to these entities amounted to approximately \$454,000, \$442,000 and \$473,000 for the years December 31, 2001, 2000 and 1999, respectively. Amounts due to these affiliates were approximately \$32,000 as of both December 31, 2001 and 2000, respectively.

Related party agreements or fee arrangements are generally for a term of one year and approved by independent members of the Board of Directors.

NOTE 14 -- STOCK OPTION PLAN AND STOCK GRANTS

A Stock Option Plan (the "Plan") was adopted by the Company in December 1992. Pursuant to the Plan, certain officers, directors, employees and consultants of the Company may be offered the opportunity to acquire shares of Common Stock through the grant of stock options ("Options"), including non-qualified stock options and, for key employees, incentive stock options within the meaning of Section 422 of the Internal Revenue Code. The Compensation Committee will determine the vesting schedule, if any, of each Option and the term, which term shall not exceed ten years from the date of grant. As to the Options that have been granted through December 31, 2001, generally, one-third are exercisable one year after the initial grant, one-third are exercisable two years following the date such Options were granted and the remaining one-third are exercisable three years following the date such Options were granted. The Plan allows for 10,000 Options to be granted annually to each director. The Common Stock with respect to which the Options may be granted during any calendar year to any grantee shall not exceed 250,000 shares. In addition, the Plan provides for the granting of stock appreciation rights ("SARs") and restricted stock grants ("Stock Grants"). A maximum of 4,000,000 shares of Common Stock were available for grant under the Plan as of December 31, 2001.

In 2001, 2000 and 1999, the Company issued 0, 19,181 and 14,666 shares related to Stock Grants, respectively, which represented a portion of certain employee bonuses. The fair market value of these Stock Grants of approximately \$0, \$525,000 and \$352,000 at the date of grant was recorded as compensation expense by the Company in 2001, 2000 and 1999, respectively.

In 1998, the Company awarded 233,500 Stock Grants to certain members of senior management of the Company. These Stock Grants vest over five years, but may be restricted for a period of up to ten years depending upon certain performance benchmarks tied to increases in funds from operations being met. The fair market value of these Stock Grants of approximately \$5.7 million as of the date of grant was treated in 1998 as deferred compensation. The Company amortized approximately \$2.0 million and \$593,000 related to these Stock Grants in 2001 and 2000, respectively. The balance of unamortized deferred compensation related to these Stock Grants is \$2,206,000 as of December 31, 2001.

In 1999, the Company awarded 65,000 Stock Grants to certain members of senior management of the Company. These Stock Grants vest over three years with one-half vesting in 1999. The fair market value of these Stock Grants of approximately \$1.5 million as of the date of grant was treated in 1999 as deferred compensation. The Company amortized approximately \$386,000 and \$385,000 related to these Stock Grants in 2001 and 2000, respectively.

In 2000, the Company awarded 69,750 Stock Grants to certain members of senior management of the Company. These Stock Grants vest over three years with one-half vesting in 2000. The fair market value of these Stock Grants of approximately \$1.9 million as of the date of grant was treated in 2000 as deferred compensation. The Company amortized approximately \$478,000 and \$955,000 related to these Stock Grants in 2001 and 2000 respectively. The balance of unamortized deferred compensation related to these Stock Grants is \$478,000 as of December 31, 2001.

In 2001, the Company awarded 43,000 Stock Grants to certain members of senior management of the Company. These Stock Grants vest over five years, but may be restricted for a period of up to ten years depending upon certain performance benchmarks tied to increases in funds from operations being met. The fair market value of these Stock Grants of approximately \$1.2 million as of the date of grant was treated in 2001 as deferred compensation. The Company amortized approximately \$239,000 related to these Stock Grants in 2001. The balance of unamortized deferred compensation related to these Stock Grants is approximately \$957,000 as of December 31, 2001.

In 1999, the Plan was amended to provide a Stock Grant of 2,000 shares vesting over three years in lieu of the 10,000 Options granted after the amendment to each director, if the director so elects. The fair market value of Stock Grants awarded to directors of approximately \$386,000, \$401,000 and \$432,000 in 1999, 2000 and 2001 respectively, were treated as deferred compensation. The Company amortized approximately \$406,280 related to these Stock Grants in 2001. The balance of unamortized deferred compensation related to the 1999, 2000, and 2001 Stock Grants is \$0, \$134,000 and \$288,000 respectively as of December 31, 2001.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14 -- STOCK OPTION PLAN AND STOCK GRANTS (CONTINUED)

The Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related Interpretations in accounting for its Options and Stock Grants because, as discussed below, the alternative fair value accounting provided for under FASB Statement No. 123, "Accounting for Stock-Based Compensation," ("SFAS No. 123") requires use of option valuation models that were not developed for use in valuing employee stock options. Under APB 25, because the exercise price of the Company's Options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized. Additionally, the amount recognized as expense for the Stock Grants during any given year of the performance period is dependent on certain performance benchmarks being met.

Pro forma information regarding net income and earnings per share is required by SFAS No. 123, and has been determined as if the Company had accounted for its Options and Stock Grants under the fair value method of that Statement. The fair value for the Options was estimated at the date of grant using a Black-Scholes option pricing model with the following weighted-average assumptions for 2001, 2000 and 1999, respectively: risk-free interest rates of 3.5%, 5.5% and 6.3%; dividend yields of 6.3%, 6.3% and 6.3%; volatility factors of the expected market price of the Company's common Stock of .19, .20 and .21; and a weighted-average expected life of the Options of 5 years. The fair value of the Stock Grants granted in 2001, 2000 and 1999 has been estimated at approximately 30% below the calculated fair market value on the date of grant because these Stock Grants may remain restricted even after they become fully vested.

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's Options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of the Company's Options. In addition, the existing models are not representative of the effects on reported net income for future years.

For purposes of pro forma disclosures, the estimated fair value of the Options is amortized to expense over the Options' vesting period and the estimated fair value of the Stock Grants is amortized to expense over the same period. The pro forma effect of SFAS No. 123 on the Company's net income for the years ended December 31, 2001, 2000 and 1999 was \$648,000 (\$0.02 per share), \$134,000 (\$0.0 per share) and \$138,000 (\$0.0 per share), respectively.

A summary of the Company's stock option activity, and related information for the years ended December 31, 2001, 2000 and 1999 follows:

WEIGHTED
AVERAGE
SHARES
SUBJECT
EXERCISE
PRICE TO
OPTIONS
PER
SHARE --
-----
-----
-----
-----
Balance
at
December
31, 1998
1,899,379
\$21.08
Options
granted
313,400
23.91
Options
exercised
(126,565)
19.25
Options
canceled
(66,767)
24.08 --

-----  
Balance  
at  
December  
31, 1999  
2,019,447  
21.72  
Options  
granted  
440,077  
25.94  
Options  
exercised  
(250,092)  
23.17  
Options  
canceled  
(101,227)  
24.33 --  
-----  
Balance  
at  
December  
31, 2000  
2,108,205  
22.30  
Options  
granted  
234,150  
29.44  
Options  
exercised  
(387,115)  
19.98  
Options  
canceled  
(69,891)  
25.05 --  
-----  
Balance  
at  
December  
31, 2001  
1,885,349  
23.57  
=====

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14 -- STOCK OPTION PLAN AND STOCK GRANTS (CONTINUED)

On March 23, 2001, the Company's Board of Directors approved resolutions amending and restating the Plan effective March 23, 2001 (the "Amended Plan") to increase the number of Common Shares issuable thereunder by 2,000,000 shares of Common Stock to an aggregate of 6,000,000 shares. On May 8, 2001, the Company's shareholder's approved the Amended Plan.

As of December 31, 2001, 2000 and 1999, 1,252,344 shares, 416,603 shares and 747,258 shares remained available for grant, respectively, and 1,422,211 shares, 1,562,074 shares and 1,426,072 shares were exercisable, respectively. Exercise prices for Options outstanding as of December 31, 2001 ranged from \$12.88 to \$30.65, with the substantial majority of the exercise prices exceeding \$17.25. The remaining weighted-average contractual life of those Options was 6.2 years. The weighted average exercise price of outstanding and exercisable options was \$22.39 as of December 31, 2001.

NOTE 15 -- PREFERRED STOCK

The Company's Board of Directors is authorized under the Company's charter, without further stockholder approval, to issue, from time to time, in one or more series, 10,000,000 shares of \$.01 par value preferred stock (the "Preferred Stock"), with specific rights, preferences and other attributes as the Board may determine, which may include preferences, powers and rights that are senior to the rights of holders of the Company's Common Stock. However, under certain circumstances, the issuance of preferred stock may require stockholder approval pursuant to the rules and regulations of The New York Stock Exchange. As of December 31, 2001 and 2000, no Preferred Stock was issued by the Company.

NOTE 16 -- SAVINGS PLAN

The Company has a qualified retirement plan, with a salary deferral feature designed to qualify under Section 401 of the Code (the "401(k) Plan"), to cover its employees and those of its Subsidiaries, if any. The 401(k) Plan permits eligible employees of the Company and those of any Subsidiary to defer up to 19% of their eligible compensation on a pre-tax basis subject to certain maximum amounts. In addition, the Company will match dollar-for-dollar the participant's contribution up to 4% of the participant's eligible compensation.

In addition, amounts contributed by the Company will vest, on a prorated basis, according to the participant's vesting schedule. After five years of employment with the Company, the participants will be 100% vested for all amounts contributed by the Company. Additionally, a discretionary profit sharing component of the 401(k) Plan provides for a contribution to be made annually for each participant in an amount, if any, as determined by the Company. All employee contributions are 100% vested. The Company's contribution to the 401(k) Plan was approximately \$353,000, \$315,000 and \$385,000, for the years ended December 31, 2001, 2000 and 1999, respectively. The Company's plan contribution for the profit sharing component of the 401(k) Plan is \$139,000 for the year ended December 31, 2001.

NOTE 17 -- COMMITMENTS AND CONTINGENCIES

DEANZA SANTA CRUZ MOBILE ESTATES

The residents of DeAnza Santa Cruz Mobile Estates, a property located in Santa Cruz, California (the "City") previously brought several actions opposing certain fees and charges in connection with water service at the Property. This summary provides the history and reasoning underlying the Company's defense of the residents' claims and explains the Company's decision to continue to defend its position, which the Company believes is fair and accurate.

DeAnza Santa Cruz Mobile Estates is a 198-site Community overlooking the Pacific Ocean. It is subject to the City's rent control ordinance which limits annual rent increases to 75% of CPI. The Company purchased this Property in August 1994 from certain unaffiliated DeAnza entities ("DeAnza"). Prior to the Company's purchase in 1994, DeAnza made the decision to submeter and separately bill tenants at the Property for both water and sewer in 1993 in the face of the City's rapidly rising utility costs.



MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 17 -- COMMITMENTS AND CONTINGENCIES (CONTINUED)

Under California Civil Code Section 798.41, DeAnza was required to reduce rent by an amount equal to the average cost of usage over the preceding 12 months. This was done. With respect to water charges, because DeAnza did not want to be regulated by the California Public Utility Commission ("CPUC"), DeAnza relied on California Public Utilities Code Section 2705.5 ("CPUC Section 2705.5") to determine what rates would be charged for water on an ongoing basis without becoming a public utility. DeAnza and the Company interpreted the statute as providing that in a submetered mobile home park, the property owner is not subject to regulation and control of the CPUC so long as the users are charged what they would be charged by the utility company if users received their water directly from the utility company. In Santa Cruz, customers receiving their water directly from the City's water utility were charged a certain lifeline rate for the first 400 ccfs of water and a greater rate for usage over 400 ccfs of water, a readiness to serve charge of \$7.80 per month and tax on the total. In reliance on CPUC Section 2705.5, DeAnza implemented its billings on this schedule notwithstanding that it did not receive the discount for the first 400 ccfs of water because it was a commercial and not a residential customer.

A dispute with the residents ensued over the readiness to serve charge and tax thereon. The residents argued that California Civil Code Section 798.41 required that the Property owner could only pass through its actual costs of water (and that the excess charges over the amount of the rent rollback were an improper rent increase) and that CPUC Section 2705.5 was not applicable. DeAnza unbundled the utility charges from rent consistent with California Civil Code Section 798.41 and it has generally been undisputed that the rent rollback was accurately calculated.

In August 1994, when the Company acquired the Property, the Company reviewed the respective legal positions of the Santa Cruz Homeowners Association ("HOA") and DeAnza and concurred with DeAnza. DeAnza's reliance on CPUC Section 2705.5 made both legal and practical sense in that residents paid only what they would pay if they lived in a residential neighborhood within the City and permitted DeAnza to recoup part of the expenses of operating a submetered system through the readiness to serve charge.

Over a period of 18 months from 1993 into May of 1995, a series of complaints were filed by the HOA and Herbert Rossman, a resident, against DeAnza, and later, the Company. DeAnza and the Company demurred to each of these complaints on the grounds that the CPUC had exclusive jurisdiction over the setting of water rates and that residents under rent control had to first exhaust their administrative remedies before proceeding in a civil action. At one point, the case was dismissed (with leave to amend) on the basis that jurisdiction was with the CPUC and, at another point, Mr. Rossman was dismissed from the case because he had not exhausted his administrative remedies.

On June 29, 1995, a hearing was held before a City rent control officer on billing and submetering issues related to both water and sewer. The Company and DeAnza prevailed on all issues related to sewer and the rent rollback related to water, but the hearing officer determined that the Company could only pass through its actual cost of water, i.e., a prorated readiness to serve charge and tax thereon. The hearing officer did not deal with the subsidy being given to residents through the quantity charge and ordered a rebate in a fixed amount per resident. The Company and DeAnza requested reconsideration on this issue, among others, which reconsideration was denied by the hearing officer.

The Company then took a writ of mandate (an appeal from an administrative order) to the Superior Court and, pending this appeal, the residents, the Company and the City agreed to stay the effect of the hearing officer's decision until the Court rendered judgment.

In July 1996, the Superior Court affirmed the hearing officer's decision without addressing concerns about the failure to take the subsidy on the quantity charge into account.

NOTE 17 -- COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Company requested that the City and the HOA agree to a further stay pending appeal to the court of appeal, but they refused and the appeal court denied the Company's request for a stay in late November 1996. Therefore, on January 1, 1997, the Company reduced its water charges at this Property to reflect a pass-through of only the readiness to serve charge and tax at the master meter (approximately \$0.73) and to eliminate the subsidy on the water charges. On their March 1, 1997 rent billings, residents were credited for amounts previously "overcharged" for readiness to serve charge and tax. The amount of the rebate given by the Company and DeAnza was \$36,400. In calculating the rebate, the Company and DeAnza took into account the previous subsidy on water usage although this issue had not yet been decided by the court of appeal. The Company and DeAnza felt legally safe in so doing based on language in the hearing officer's decision that actual costs could be passed through.

On March 12, 1997, the Company also filed an application with the CPUC to dedicate the water system at this Property to public use and have the CPUC set cost-based rates for water usage. The Company believed it was obligated to take this action because of its consistent reliance on CPUC Section 2705.5 as a safe harbor from CPUC jurisdiction. That is, when the Company could no longer charge for water as the local serving utility would charge, it was no longer exempt from the CPUC's jurisdiction and control under CPUC Section 2705.5.

On March 20, 1998, the court of appeal issued the writ of mandate requested by the Company on the grounds that the hearing officer had improperly calculated the amount of the rebate (meaning the Company had correctly calculated the rent credits), but also ruling that the hearing officer was correct when he found that the readiness to serve charge and tax thereon as charged by DeAnza and the Company were an inappropriate rent increase. The decision primarily reflected the court of appeal's view that CPUC Section 2705.5 operated as a ceiling and that California Civil Code Section 798.41 allowed for a charge based on actual costs, including costs of administration, operation and maintenance of the system, but that the Company had not to provide evidence of such costs. The court of appeal further agreed with the Company that the City's hearing officer did not have the authority under California Civil Code Section 798.41 to establish rates that could be charged in the future.

Following this decision, the CPUC granted the Company its certificate of convenience and necessity on December 17, 1998 and approved cost-based rates and charges for water that exceed what residents were paying under the Company's reliance on CPUC Section 2705.5. Concurrently, the CPUC also issued an Order Instituting Investigation ("OII") confirming its exclusive jurisdiction over the issue of water rates in a submetered system and commencing an investigation into the confusion and turmoil over billings in submetered properties. Specifically, the OII states: "The Commission has exclusive and primary jurisdiction over the establishment of rates for water and sewer services provided by private entities."

Specifically, the CPUC ruling regarding the Company's application stated: "The ultimate question of what fees and charges may or may not be assessed, beyond external supplier pass-through charges, for in-park facilities when a mobile home park does not adhere to the provisions of CPUC Section 2705.5, must be decided by the Commission."

After the court of appeal decision, the HOA brought all of its members back into the underlying civil action for the purpose of determining damages, including punitive damages, against the Company. The trial was continued from July 1998 to January 1999 to give the CPUC time to act on the Company's application. Notwithstanding the action taken by the CPUC in issuing the OII in December 1998, the trial court denied the Company's motion to dismiss on jurisdictional grounds and trial commenced before a jury on January 11, 1999.

Not only did the trial court not consider the Company's motion to dismiss, the trial court refused to allow evidence of the OII or the Company's CPUC approval to go before the jury. Notwithstanding the Company's strenuous objections, the judge also allowed evidence of the Company's and DeAnza's litigation tactics to be used as evidence of bad faith and oppressive actions (including evidence of the application to the CPUC requesting a \$22.00 readiness to serve charge). The Company's motion for a mistrial based upon these evidentiary rulings was denied. On January 22, 1999, the jury returned a verdict awarding \$6.0 million of punitive damages against the Company and DeAnza. The Company had previously agreed to indemnify DeAnza on the matter.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 17 -- COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Company bonded the judgment pending appeal in accordance with California procedural rules, which require a bond equal to 150% of the amount of the judgment. Post-judgment interest will accrue at the statutory rate of 10.0% per annum.

On April 19, 1999, the trial court denied all of the Company's and DeAnza's post-trial motions for judgement notwithstanding the verdict, new trial and remittur. The trial court also awarded \$700,000 of attorneys' fees to plaintiffs. The Company appealed the jury verdict and attorneys' fees award (which also accrues interest at the statutory rate of 10.0% per annum).

On December 21, 2001 the California Court of Appeal for the Sixth District reversed the \$6.0 million punitive damage award and the related award of attorneys' fees on the basis that punitive damages are not available as a remedy for a statutory violation of the MRL. The decision of the appellate court left the HOA with the right to seek a new trial in which it must prove its entitlement to either the statutory penalty and attorneys' fees available under the MRL or punitive damages based on causes of action for fraud, misrepresentation or other tort. The Company expects the HOA to seek a new trial during 2002. The Company intends to vigorously defend itself.

In two related appeals, the Company had argued that the trial court's ability to enter an award of attorneys' fees in favor of the HOA and to take certain other actions was preempted by the exercise of exclusive jurisdiction by the CPUC over the issue of how to set rates for water in a submetered mobile home park. During 2000, the California court of appeal rejected the Company's preemption argument with respect to these prior rulings in favor of plaintiffs, one of which had awarded plaintiffs approximately \$100,000 of attorneys' fees. The California Supreme Court declined to accept the case for review and the Company paid the judgment, including post-judgment interest thereon, and settled the matter for approximately \$200,000 late in 2000.

In a separate matter, in December 2000 the HOA and certain individual residents of the Property filed a complaint in the Superior Court of California, County of Santa Cruz (No. CV 139825) against the Company, certain affiliates of the Company and certain employees of the Company. The new lawsuit seeks damages, including punitive damages, for intentional infliction of emotional distress, unfair business practices, and unlawful retaliation purportedly arising from allegedly retaliatory rent increases which were noticed by the Company to certain residents in September 2000. The Company believes that the residents who received rent increase notices with respect to rent increases above those permitted by the local rent control ordinance were not covered by the ordinance either because they did not comply with the provisions of the ordinance or because they are exempted by state law. On December 29, 2000, the Superior Court of California, County of Santa Cruz enjoined such rent increases. The Company intends to vigorously defend the matter, which may go to trial in the summer of 2002.

ELLENBURG COMMUNITIES

The Company and certain other parties entered into a settlement agreement ("the Settlement"), which was approved by the Los Angeles County Superior Court in April 2000. The Settlement resolved substantially all of the litigation and appeals involving the Ellenburg Properties, and transactions arising out of the settlement closed on May 22, 2000 (see Note 5). Only the appeals of the two entities remain, neither of which is expected to materially affect the Company.

In connection with the Ellenburg Acquisition, on September 8, 1999, Ellenburg Fund 20 ("Fund 20") filed a cross complaint in the Ellenburg dissolution proceeding against the Company and certain of its affiliates alleging causes of action for fraud and other claims in connection with the Ellenburg acquisition. The Company subsequently successfully had the cross complaint against the Company and its affiliates dismissed with prejudice by the California Superior Court. However, Fund 20 has appealed. This appeal was one not resolved by the Settlement. The Company believes Fund 20's allegations are without merit and will vigorously defend itself.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 17 -- COMMITMENTS AND CONTINGENCIES (CONTINUED)

In October 2001, Fund 20 sued the Company and certain of its affiliates again, this time in Alameda County, California making substantially the same allegations. The Company obtained an injunction preventing the case from proceeding until the Fund 20 appeal is decided and other related proceedings in Arizona (from which the Company has already been dismissed with prejudice) are concluded.

CANDLELIGHT PROPERTIES, L.L.C

In 1996, 1997 and 1998, the Lending Partnership made loans to Candlelight Properties, L.L.C. ("Borrower") in the aggregate principal amount of \$8,050,000 (collectively, the "Loan". The Loan was secured by a mortgage on Candlelight Village ("Candlelight"), a Property in Columbus, Indiana, and was guaranteed by Ronald E. Farren, the 99% owner of Borrower. The Company accounted for the Loan as an investment in real estate and, accordingly, Candlelight's rental revenues and operating costs were included with the Company's rental revenues and operating costs for financial reporting purposes. Concurrently with the funding of the Loan, Borrower granted the Operating Partnership the option to acquire Candlelight upon the maturity of the Loan. The Operating Partnership notified Borrower that it was exercising its option to acquire Candlelight in March 1999, and the Loan subsequently matured on May 3, 1999. However, Borrower failed to repay the Loan and refused to convey Candlelight to the Operating Partnership.

Borrower filed suit in the Circuit Court of Bartholomew County, Indiana ("Court") on May 5, 1999, seeking declaratory judgment on the validity of the exercise of the option. The Lending Partnership filed suit in the Court the next day, seeking to foreclose its mortgage, and the suits were consolidated by the Court.

On September 20, 2001, the parties entered into a settlement agreement providing for a cash payment of \$10.8 million to the Lending Partnership and dismissal with prejudice of all litigation among the parties and their affiliates, among other terms. The closing under the Settlement Agreement occurred on October 5, 2001. The Company accounted for the Settlement as a disposition of the property.

WESTWINDS

The Operating Partnership is the ground lessee ("Lessee") of certain property in San Jose, California under ground leases ("Leases") from the Nicholson Family Trust ("Lessor"). On February 13, 2001, Lessor filed a petition for arbitration of disputes over whether certain items constitute "gross revenue" under the Leases in which petition Lessor seeks damages and termination of the Leases. Lessee responded on March 12, 2001 disputing Lessor's contentions. Lessor claims that "gross revenue" for the purpose of calculating percentage rent owing to Lessor under the ground leases includes certain amounts Lessee has recouped from tenants of the Property (who are protected by rent control) related to ground rent already paid to Lessor. Lessee has successfully been able to pass-through to tenants at the property increases in ground rent under the Leases. Lessee contends that this pass-through results in reimbursement of lease expense, not "gross revenue." Lessor also contends that the "net income" of RSI from the Property should be included in the gross revenue calculation. Lessee disputes this for many reasons, including, but not limited to, the fact that RSI is not a lessee under the Leases, the sales activity is not conducted by Lessee, and RSI is a separate company from Lessee.

Lessor's motion for summary judgment on the pass-through issue was denied by an arbitration panel on November 2, 2001. Lessor and Lessee have agreed to mediate the dispute prior to arbitration. The Company does not believe that the amounts in question are material even if resolved against the Lessee and, based upon advice of counsel, does not believe that the Lessor will be successful in terminating the Leases.

OTHER

The Company is involved in various other legal proceedings arising in the ordinary course of business. Management believes that all proceedings herein described or referred to, taken together, are not expected to have a material adverse impact on the Company.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 18 -- SUBSEQUENT EVENTS

Effective January 1, 2002, the Company purchased all of the outstanding Common Stock of RSI from affiliated and non-affiliated owners for approximately \$675,000. As a result, the Company owns and controls RSI and will consolidate RSI as of January 1, 2002.

MANUFACTURED HOME COMMUNITIES, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 19 -- QUARTERLY FINANCIAL DATA (UNAUDITED)

The following is unaudited quarterly data for 2001, 2000 and 1999 (amounts in thousands, except for per share amounts):

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER	QUARTER	QUARTER
	2001	3/31	6/30	9/30	12/31	-----
	----- Total					
Revenues.....	\$57,532	\$56,218	\$55,536	\$56,570	Income before allocation to Minority Interests and extraordinary loss on early extinguishment of debt...	\$18,739
	\$18,739	\$10,512	\$10,468	\$11,825	Net income available to common shareholders.....	\$12,644
	\$12,644	\$6,135	\$6,097	\$7,207	Weighted average Common Shares outstanding -- Basic....	20,793
	20,793	20,969	21,108	21,266	Weighted average Common Shares outstanding -- Diluted..	26,771
	26,771	26,898	27,071	27,293	Net income per Common Share outstanding - Basic.....	\$0.61
	\$0.61	\$0.29	\$0.29	\$0.34	Net income per Common Share outstanding - Diluted.....	\$0.59
	\$0.59	\$0.29	\$0.28	\$0.33		

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER	QUARTER	QUARTER
	2000	3/31	6/30	9/30	12/31	-----
	----- Total					
Revenues.....	\$57,148	\$54,271	\$53,875	\$55,384	Income before allocation to Minority Interests.....	\$10,743
	\$10,743	\$21,547	\$9,715	\$10,696	Net income available to common shareholders.....	\$6,331
	\$6,331	\$13,921	\$5,451	\$6,244	Weighted average Common Shares outstanding -- Basic....	22,297
	22,297	21,871	21,166	20,559	Weighted average Common Shares outstanding -- Diluted..	28,242
	28,242	27,809	27,077	26,520	Net income per Common Share outstanding -- Basic.....	\$0.28
	\$0.28	\$0.64	\$0.26	\$0.30	Net income per Common Share outstanding - Diluted.....	\$0.28
	\$0.28	\$0.63	\$0.25	\$0.30		

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER	QUARTER	QUARTER
	1999	3/31	6/30	9/30	12/31	-----
	----- Total					
Revenues.....	\$54,390	\$52,446	\$53,537	\$54,654	Income before allocation to Minority Interests.....	\$10,078
	\$10,078	\$8,477	\$8,417	\$7,056	Net income available to common shareholders.....	\$8,234
	\$8,234	\$6,968	\$6,877	\$5,693	Weighted average Common Shares outstanding -- Basic....	26,157
	26,157	25,773	25,613	23,381	Weighted average Common Shares outstanding -- Diluted..	32,340
	32,340	31,829	31,586	29,281	Net income per Common Share outstanding -- Basic.....	\$0.31
	\$0.31	\$0.27	\$0.27	\$0.24	Net income per Common Share outstanding - Diluted.....	\$0.31
	\$0.31	\$0.27	\$0.27	\$0.24		

SCHEDULE II  
 MANUFACTURED HOME COMMUNITIES, INC.  
 VALUATION AND QUALIFYING ACCOUNTS  
 DECEMBER 21, 2001

ADDITIONS --  
 -----  
 -----

BALANCE AT  
 CHARGED TO  
 BALANCE  
 BEGINNING  
 CHARGED TO  
 OTHER AT END  
 OF OF PERIOD  
 INCOME  
 ACCOUNTS

DEDUCTIONS(1)  
 PERIOD -----  
 -----  
 -----  
 -----

--- For the  
 year ended  
 December 31,  
 1999:

Allowance  
 for doubtful  
 accounts.....  
 \$250,000  
 \$413,573 \$ -  
 - (\$363,573)  
 \$300,000 For  
 the year  
 ended  
 December 31,  
 2000:

Allowance  
 for doubtful  
 accounts.....  
 \$300,000  
 \$322,574 \$ -  
 - (\$322,574)  
 \$300,000 For  
 the year  
 ended  
 December 31,  
 2001:

Allowance  
 for doubtful  
 accounts.....  
 \$300,000  
 \$426,579 \$ -  
 - (\$426,579)  
 \$300,000

-----

(1) Deductions represent tenant receivables deemed uncollectible.

SCHEDULE III  
MANUFACTURED HOME COMMUNITIES, INC.  
REAL ESTATE AND ACCUMULATED DEPRECIATION  
DECEMBER 31, 2001  
(AMOUNTS IN THOUSANDS)

COSTS  
CAPITALIZED  
SUBSEQUENT TO  
INITIAL COST  
TO  
ACQUISITION  
COMPANY  
(IMPROVEMENTS)

-----  
-----  
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-----  
DEPRECIABLE  
DEPRECIABLE  
REAL ESTATE  
LOCATION  
ENCUMBRANCES  
LAND PROPERTY  
LAND PROPERTY  
-----  
-----  
-----  
-----  
-----

-----  
Apollo  
Village  
Phoenix AZ  
5,284 932  
3,219 0 446  
Brentwood  
Manor Mesa AZ  
4,575 1,998  
6,024 (1) 292  
Carefree  
Manor Phoenix  
AZ 0 706  
3,307 0 (135)  
Casa del Sol  
#1 Peoria AZ  
6,786 2,215  
6,467 0 329  
Casa del Sol  
#2 Glendale  
AZ 6,920  
2,104 6,283  
(1) 270 Casa  
del Sol #3  
Glendale AZ  
6,631 2,450  
7,452 0 166  
Central Park  
Phoenix AZ  
7,185 1,612  
3,784 0 452  
Desert Skies  
Phoenix AZ 0  
792 3,629 0  
(432)  
Fairview  
Manor Tucson  
AZ 0 1,674  
4,708 0 875  
Hacienda De  
Valencia Mesa  
AZ 8,421 833  
2,701 0 850  
Palm Shadows  
Glendale AZ  
3,121 1,400  
4,218 0 356  
Sedona  
Shadows  
Sedona AZ  
2,645 1,096  
3,431 0 286  
Sunrise



Heights  
Phoenix AZ 0  
1,000 3,016 0  
269 The Mark  
Mesa AZ 0  
1,354 4,660 6  
718 The  
Meadows Tempe  
AZ 9,260  
2,613 7,887 0  
439  
Whispering  
Palms Phoenix  
AZ 0 670  
2,399 0 (138)  
California  
Hawaiian San  
Jose CA  
17,976 5,825  
17,755 0 813  
Colony Park  
Ceres CA 0  
890 4,513 0  
(1,610)  
Concord  
Cascade  
Pacheco CA  
10,381 985  
3,016 0 682  
Contempo  
Marin San  
Rafael CA  
16,149 4,788  
16,379 (1)  
1,851  
Coralwood  
Modesto CA 0  
0 5,047 0 148  
Date Palm  
Country Club  
Cathedral  
City CA  
15,608 4,138  
14,064 (23)  
1,796 Four  
Seasons  
Fresno CA 0  
756 2,348 0  
126 Laguna  
Lake San Luis  
Obispo CA  
5,570 2,845  
7,640 1 (959)  
Lamplighter  
Spring Valley  
CA 9,393 633  
2,201 0 502  
Meadowbrook  
Santee CA 0  
4,345 12,528  
0 924 Monte  
del Lago  
Castroville  
CA 8,160  
3,150 9,469 0  
629 Quail  
Meadows  
Riverbank CA  
0 1,155 3,469  
0 149  
Nicholson  
Plaza San  
Jose CA 0 --  
4,512 0 44  
Rancho Mesa  
El Cajon CA 0  
2,130 6,616 0  
(173) Rancho  
Valley El  
Cajon CA  
4,645 685  
1,902 0 469  
Royal Holiday  
Hemet CA 0  
778 0 2,840  
Royal Oaks

Visalia CA 0  
602 1,921 0  
146 DeAnza  
Santa Cruz  
Santa Cruz CA  
5,581 2,103  
7,201 0 2,103  
Santiago  
Estates  
Sylmar CA 0  
3,562 14,205  
0 (3,098) Sea  
Oaks Los Osos  
CA 0 871  
2,703 0 128  
GROSS AMOUNT  
CARRIED AT  
CLOSE OF  
PERIOD  
12/31/01 ----  
-----  
-----

DEPRECIABLE  
ACCUMULATED  
DATE OF REAL  
ESTATE LAND  
PROPERTY  
TOTAL  
DEPRECIATION  
ACQUISITION -  
-----  
-----  
-----  
-----

--- Apollo  
Village 932  
3,665 4,597  
(883) 1994  
Brentwood  
Manor 1,997  
6,316 8,313  
(1,846) 1993  
Carefree  
Manor 706  
3,172 3,878  
(425) 1998  
Casa del Sol  
#1 2,215  
6,796 9,011  
(936) 1996  
Casa del Sol  
#2 2,103  
6,553 8,656  
(875) 1996  
Casa del Sol  
#3 2,450  
7,618 10,068  
(909) 1998  
Central Park  
1,612 4,236  
5,848 (2,442)  
1983 Desert  
Skies 792  
3,197 3,989  
(419) 1998  
Fairview  
Manor 1,674  
5,583 7,257  
(720) 1998  
Hacienda De  
Valencia 833  
3,551 4,384  
(1,931) 1984  
Palm Shadows  
1,400 4,574  
5,974 (1,324)  
1993 Sedona  
Shadows 1,096  
3,717 4,813  
(550) 1997  
Sunrise  
Heights 1,000  
3,285 4,285  
(861) 1994  
The Mark

1,360 5,378  
6,738 (1,284)  
1994 The  
Meadows 2,613  
8,326 10,939  
(2,204) 1994  
Whispering  
Palms 670  
2,261 2,931  
(300) 1998  
California  
Hawaiian  
5,825 18,568  
24,393  
(2,880) 1997  
Colony Park  
890 2,903  
3,793 (375)  
1998 Concord  
Cascade 985  
3,698 4,683  
(2,019) 1983  
Contempo  
Marin 4,787  
18,230 23,017  
(4,319) 1994  
Coralwood 0  
5,195 5,195  
(760) 1997  
Date Palm  
Country Club  
4,115 15,860  
19,975  
(3,774) 1994  
Four Seasons  
756 2,474  
3,230 (370)  
1997 Laguna  
Lake 2,846  
6,681 9,527  
(1,004) 1998  
Lamplighter  
633 2,703  
3,336 (1,510)  
1983  
Meadowbrook  
4,345 13,452  
17,797  
(1,677) 1998  
Monte del  
Lago 3,150  
10,098 13,248  
(1,468) 1997  
Quail Meadows  
1,155 3,618  
4,773 (454)  
1998  
Nicholson  
Plaza 0 4,556  
4,556 (658)  
1997 Rancho  
Mesa 2,130  
6,443 8,573  
(821) 1998  
Rancho Valley  
685 2,371  
3,056 (1,320)  
1983 Royal  
Holiday 778  
2,840 3,618  
(97) 1998  
Royal Oaks  
602 2,067  
2,669 (301)  
1997 DeAnza  
Santa Cruz  
2,103 9,304  
11,407  
(1,677) 1994  
Santiago  
Estates 3,562  
11,107 14,669  
(1,233) 1998  
Sea Oaks 871  
2,831 3,702  
(409) 1997



SCHEDULE III  
 MANUFACTURED HOME COMMUNITIES, INC.  
 REAL ESTATE AND ACCUMULATED DEPRECIATION  
 DECEMBER 31, 2001  
 (AMOUNTS IN THOUSANDS)

COSTS  
 CAPITALIZED  
 SUBSEQUENT TO  
 INITIAL COST  
 TO  
 ACQUISITION  
 COMPANY  
 (IMPROVEMENTS)

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DEPRECIABLE  
 DEPRECIABLE  
 REAL ESTATE  
 LOCATION  
 ENCUMBRANCES  
 LAND PROPERTY  
 LAND PROPERTY

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Sunshadow San  
 Jose CA 0 0  
 5,707 0 89  
 Westwinds (4  
 properties)  
 San Jose CA 0  
 0 17,616 0  
 4,131 Bear  
 Creek  
 Sheridan CO 0  
 1,100 31,559  
 0 (28,094)  
 Cimarron  
 Broomfield CO  
 8,086 863  
 2,790 0 464  
 Golden  
 Terrace  
 Golden CO  
 8,041 826  
 2,415 0 436  
 Golden  
 Terrace South  
 Golden CO  
 2,400 750  
 2,265 0 477  
 Golden  
 Terrace West  
 Golden CO  
 9,737 1,694  
 5,065 0 750  
 Hillcrest  
 Village  
 Aurora CO  
 15,476 1,912  
 5,202 290  
 1,967 Holiday  
 Hills Denver  
 CO 19,437  
 2,159 7,780 1  
 3,156 Holiday  
 Village CO  
 Co. Springs  
 CO 6,264 567  
 1,759 0 588  
 Pueblo Grande  
 Pueblo CO  
 3,476 241  
 1,069 0 334  
 Woodland  
 Hills Denver  
 CO 11,765  
 1,928 4,408 0

2,192 Aspen  
Meadows  
Rehoboth DE 0  
1,148 4,543 0  
(948) Camelot  
Acres  
Rehoboth DE  
7,003 527  
2,058 0 574  
Mariners Cove  
Millsboro DE  
0 990 2,971 0  
2,949 McNicol  
Rehoboth DE 0  
563 2,106 0  
(347)  
Sweetbriar  
Rehoboth DE 0  
498 3,027 1  
(1,337)  
Waterford  
Estates Bear  
DE 0 5,250  
16,202 0 370  
Whispering  
Pines Lewes  
DE 0 1,536  
4,609 0 724  
Maralago Cay  
Lantana FL 0  
5,325 15,420  
0 1,090 Bay  
Indies Venice  
FL 22,525  
10,483 3,390  
0 29,549 Bay  
Lake Estates  
Nokomis FL  
4,651 990  
3,304 0 495  
Buccaneer N.  
Ft. Myers FL  
19,532 4,207  
14,410 0 756  
Bulow Village  
Flagler Beach  
FL 1,110  
3,637 949 0  
4,186  
Carriage Cove  
Daytona Beach  
FL 8,221  
2,914 10,176  
0 (1,168)  
Coral Cay  
Margate FL  
16,742 5,890  
20,211 0  
1,580 Coquina  
St Augustine  
FL 0 5,286  
5,545 0 2,363  
Meadows at  
Countrywood  
Plant City FL  
0 4,514  
13,175 0  
1,442 Country  
Place New  
Port Richey  
FL 4,008 663  
0 18 6,288  
Country Side  
North Vero  
Beach FL 0  
3,711 14,751  
0 (2,646)  
East Bay Oaks  
Largo FL  
6,674 1,240  
3,322 0 377  
Eldorado  
Village Largo  
FL 4,576 778  
0 0 2,669  
Grand Island

Grand island  
FL 0 1,723  
5,208 38 629  
Heritage  
Village Vero  
Beach FL 0  
2,403 7,259 0  
327 Hillcrest  
Clearwater FL  
0 1,278 5,850  
0 (1,624)

Holiday Ranch  
Largo FL 0  
925 3,142 0  
(155)

GROSS AMOUNT  
CARRIED AT  
CLOSE OF  
PERIOD  
12/31/01 ----  
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DEPRECIABLE  
ACCUMULATED  
DATE OF REAL  
ESTATE LAND  
PROPERTY  
TOTAL  
DEPRECIATION  
ACQUISITION -  
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--- Sunshadow  
0 5,796 5,796  
(848) 1997

Westwinds (4  
properties) 0  
21,747 21,747  
(3,185) 1997

Bear Creek  
1,100 3,465  
4,565 (460)  
1998 Cimarron  
863 3,254  
4,117 (1,864)

1983 Golden  
Terrace 826  
2,851 3,677  
(1,515) 1983  
Golden

Terrace South  
750 2,742  
3,492 (399)  
1997 Golden  
Terrace West  
1,694 5,815  
7,509 (2,753)  
1986

Hillcrest  
Village 2,202  
7,169 9,371  
(3,903) 1983

Holiday Hills  
2,160 10,936  
13,096  
(5,705) 1983

Holiday  
Village CO  
567 2,347  
2,914 (1,236)

1983 Pueblo  
Grande 241  
1,403 1,644  
(780) 1983

Woodland  
Hills 1,928  
6,600 8,528  
(1,767) 1994

Aspen Meadows  
1,148 3,595  
4,743 (495)  
1998 Camelot  
Acres 527

2,632 3,159  
(1,449) 1983  
Mariners Cove  
990 5,920  
6,910 (2,071)  
1987 McNicol  
563 1,759  
2,322 (232)  
1998  
Sweetbriar  
499 1,690  
2,189 (211)  
1998  
Waterford  
Estates 5,250  
16,572 21,822  
(1,969) 1996  
Whispering  
Pines 1,536  
5,333 6,869  
(2,232) 1998  
Maralago Cay  
5,325 16,510  
21,835  
(2,291) 1997  
Bay Indies  
10,483 32,939  
43,422  
(8,621) 1994  
Bay Lake  
Estates 990  
3,799 4,789  
(965) 1994  
Buccaneer  
4,207 15,166  
19,373  
(3,709) 1994  
Bulow Village  
3,637 5,135  
8,772 (768)  
1994 Carriage  
Cove 2,914  
9,008 11,922  
(1,199) 1998  
Coral Cay  
5,890 21,791  
27,681  
(5,185) 1994  
Coquina 5,286  
7,908 13,194  
(404) 1999  
Meadows at  
Countrywood  
4,514 14,617  
19,131  
(1,948) 1998  
Country Place  
681 6,288  
6,969 (1,973)  
1986 Country  
Side North  
3,711 12,105  
15,816  
(1,597) 1998  
East Bay Oaks  
1,240 3,699  
4,939 (2,156)  
1983 Eldorado  
Village 778  
2,669 3,447  
(1,541) 1983  
Grand Island  
1,761 5,837  
7,598 (170)  
2001 Heritage  
Village 2,403  
7,586 9,989  
(1,946) 1994  
Hillcrest  
1,278 4,226  
5,504 (537)  
1998 Holiday  
Ranch 925  
2,987 3,912  
(396) 1998





SCHEDULE III  
 MANUFACTURED HOME COMMUNITIES, INC.  
 REAL ESTATE AND ACCUMULATED DEPRECIATION  
 DECEMBER 31, 2001  
 (AMOUNTS IN THOUSANDS)

COSTS  
 CAPITALIZED  
 SUBSEQUENT TO  
 INITIAL COST  
 TO  
 ACQUISITION  
 COMPANY  
 (IMPROVEMENTS)

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DEPRECIABLE  
 DEPRECIABLE  
 REAL ESTATE  
 LOCATION  
 ENCUMBRANCES  
 LAND PROPERTY  
 LAND PROPERTY

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Holiday  
 Village FL  
 Vero Beach FL  
 0 350 1,792 0  
 (313) Indian  
 Oaks  
 Rockledge FL  
 3,091 1,089  
 4,527 0 (518)  
 Lake Fairways  
 N. Ft. Myers  
 FL 0 6,075  
 18,134 0 810  
 Lake Haven  
 Dunedin FL  
 8,071 1,135  
 4,047 0 763  
 Lakewood  
 Village  
 Melbourne FL  
 0 1,863 5,627  
 (1) 385  
 Landings Port  
 Orange FL 0  
 2,446 8,496 0  
 (576) Mid-  
 Florida Lakes  
 Leesburg FL  
 25,112 5,997  
 20,635 0  
 2,683 Oak  
 Bend Ocala FL  
 0 850 2,572 0  
 605 Pickwick  
 Port Orange  
 FL 8,375  
 2,803 8,870 0  
 46 Pine Lakes  
 N. Ft. Myers  
 FL 0 6,306  
 14,579 0  
 4,770  
 Sherwood  
 Forest  
 Kissimmee FL  
 9,637 4,852  
 19,642 0  
 (2,849)  
 Sherwood  
 Forest RV  
 Park  
 Kissimmee FL  
 0 2,870 3,621

568 636  
Southern  
Palms Eustis  
FL 0 2,169  
5,884 0 1,013  
Spanish Oaks  
Ocala FL  
7,445 2,250  
6,922 0 509  
Oaks at  
Countrywood  
Plant City FL  
0 1,111 2,513  
(340) 188 The  
Heritage N.  
Ft. Myers FL  
0 1,438 4,371  
249 2,046 The  
Lakes at  
Countrywood  
Plant city FL  
0 2,377 7,086  
37 627 The  
Meadows, FL  
Palm Beach  
Gardens FL  
6,202 3,229  
9,870 0 220  
Windmill  
Manor  
Bradenton FL  
6,282 2,153  
6,125 (1) 874  
Windmill  
Village --  
Ft. Myers N.  
Ft. Myers FL  
9,406 1,417  
5,440 0 942  
Windmill  
Village North  
Sarasota FL  
9,069 1,523  
5,063 0 580  
Windmill  
Village South  
Sarasota FL  
5,563 1,106  
3,162 0 311  
Five Seasons  
Cedar Rapids  
IA 0 1,053  
5,361 0  
(1,440)  
Holiday  
Village, IA  
Sioux City IA  
0 313 3,744 0  
351 Golf  
Vistas Monee  
IL 0 2,843  
4,719 0 3,529  
Willow Lake  
Estates Elgin  
IL 21,392  
6,138 21,033  
0 1,953 Burns  
Harbor  
Estates  
Chesterton IN  
0 916 2,909 0  
1,469 Oak  
Tree Village  
Portage IN  
6,092 0 0 569  
3,465  
Windsong  
Indianapolis  
IN 0 1,482  
6,509 0  
(1,916)  
Pheasant  
Ridge Mt.  
Airy MD 0 376  
1,779 0 356  
Creekside

Wyoming MI 0  
1,109 3,646 0  
(19) Camelot  
Acres  
Burnsville MN  
0 1,778 6,577  
0 (901) Casa  
Village  
Billings MT  
8,040 1,011  
3,109 181  
1,913 Del Rey  
Albuquerque  
NM 0 1,926  
5,800 0 677  
Bonanza Las  
Vegas NV  
9,988 908  
2,643 0 613  
Boulder  
Cascade Las  
Vegas NV  
7,878 2,995  
12,413 0  
(2,756)  
GROSS AMOUNT  
CARRIED AT  
CLOSE OF  
PERIOD  
12/31/01 ----  
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DEPRECIABLE  
ACCUMULATED  
DATE OF REAL  
ESTATE LAND  
PROPERTY  
TOTAL  
DEPRECIATION  
ACQUISITION -  
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--- Holiday  
Village FL  
350 1,479  
1,829 (176)  
1998 Indian  
Oaks 1,089  
4,009 5,098  
(518) 1998  
Lake Fairways  
6,075 18,944  
25,019  
(4,500) 1994  
Lake Haven  
1,135 4,810  
5,945 (2,645)  
1983 Lakewood  
Village 1,862  
6,012 7,874  
(1,537) 1994  
Landings  
2,446 7,920  
10,366  
(1,068) 1998  
Mid-Florida  
Lakes 5,997  
23,318 29,315  
(5,489) 1994  
Oak Bend 850  
3,177 4,027  
(853) 1993  
Pickwick  
2,803 8,916  
11,719  
(1,161) 1998  
Pine Lakes  
6,306 19,349  
25,655  
(4,505) 1994  
Sherwood  
Forest 4,852  
16,793 21,645

(2,048) 1998  
Sherwood  
Forest RV  
Park 3,438  
4,257 7,695  
(506) 1998  
Southern  
Palms 2,169  
6,897 9,066  
(654) 1998  
Spanish Oaks  
2,250 7,431  
9,681 (2,003)  
1993 Oaks at  
Countrywood  
771 2,701  
3,472 (285)  
1998 The  
Heritage  
1,687 6,417  
8,104 (1,657)  
1993 The  
Lakes at  
Countrywood  
2,414 7,713  
10,127 (226)  
2001 The  
Meadows, FL  
3,229 10,090  
13,319 (824)  
1999 Windmill  
Manor 2,152  
6,999 9,151  
(939) 1998  
Windmill  
Village --  
Ft. Myers  
1,417 6,382  
7,799 (3,575)  
1983 Windmill  
Village North  
1,523 5,643  
7,166 (3,230)  
1983 Windmill  
Village South  
1,106 3,473  
4,579 (2,025)  
1983 Five  
Seasons 1,053  
3,921 4,974  
(579) 1998  
Holiday  
Village, IA  
313 4,095  
4,408 (2,074)  
1986 Golf  
Vistas 2,843  
8,248 11,091  
(1,071) 1997  
Willow Lake  
Estates 6,138  
22,986 29,124  
(5,432) 1994  
Burns Harbor  
Estates 916  
4,378 5,294  
(1,236) 1993  
Oak Tree  
Village 569  
3,465 4,034  
(1,268) 1987  
Windsong  
1,482 4,593  
6,075 (621)  
1998 Pheasant  
Ridge 376  
2,135 2,511  
(1,198) 1988  
Creekside  
1,109 3,627  
4,736 (481)  
1998 Camelot  
Acres 1,778  
5,676 7,454  
(761) 1998  
Casa Village

1,192 5,022  
6,214 (2,398)  
1983 Del Rey  
1,926 6,477  
8,403 (1,883)  
1993 Bonanza  
908 3,256  
4,164 (1,806)  
1983 Boulder  
Cascade 2,995  
9,657 12,652  
(1,183) 1998

SCHEDULE III  
 MANUFACTURED HOME COMMUNITIES, INC.  
 REAL ESTATE AND ACCUMULATED DEPRECIATION  
 DECEMBER 31, 2001  
 (AMOUNTS IN THOUSANDS)

COSTS  
 CAPITALIZED  
 SUBSEQUENT TO  
 INITIAL COST  
 TO  
 ACQUISITION  
 COMPANY  
 (IMPROVEMENTS)

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DEPRECIABLE  
 DEPRECIABLE  
 REAL ESTATE  
 LOCATION  
 ENCUMBRANCES  
 LAND PROPERTY  
 LAND PROPERTY

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Cabana Las Vegas NV	
8,425	2,648
7,989	0 174
Flamingo West Las Vegas NV	
0 1,730	5,266
0 688	Villa Borega Las Vegas NV
7,470	2,896
8,774	0 186
Brook Gardens Lackawanna NY	
0 3,828	
10,310	0
1,099	
Greenwood Village Manorville NY	
0 3,667	9,414
485	2,814
Falcon Wood Village Eugene OR 4	
1,112	3,426 0
109	Quail Hollow Fairview OR 0
0 3,249	0 102
Shadowbrook Clackamas OR	
0 1,197	3,693
0 102	Green Acres Breinigsville PA 16,014
2,680	7,479 0
2,149	Fun n Sun RV Park San Benito TX
0 2,533	0 0
8,414	All Seasons Salt Lake City UT
0 510	1,623 0
163	Westwood Village Farr West UT 0
1,346	4,179 0
1,030	Meadows of Chantilly Chantilly VA

0 5,430  
 16,440 0  
 1,627 Kloshe  
 Illahee  
 Federal Way  
 WA 6,469  
 2,408 7,286 0  
 83  
 Independence  
 Hill  
 Morgantown WV  
 0 299 898 0  
 259 College  
 Heights  
 Consolidated  
 (18  
 properties)  
 Various  
 65,914 17,045  
 71,382 0 493  
 Management  
 Business  
 Chicago IL 0  
 0 436 0 7,542

-----  
 -----  
 -----  
 - \$589,954  
 \$269,795  
 \$871,001  
 \$2,076  
 \$95,266  
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GROSS AMOUNT  
 CARRIED AT  
 CLOSE OF  
 PERIOD  
 12/31/01 ----  
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 DEPRECIABLE  
 ACCUMULATED  
 DATE OF REAL  
 ESTATE LAND  
 PROPERTY  
 TOTAL  
 DEPRECIATION  
 ACQUISITION -  
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--- Cabana  
 2,648 8,163  
 10,811  
 (2,075) 1994  
 Flamingo West  
 1,730 5,954  
 7,684 (1,416)  
 1994 Villa  
 Borega 2,896  
 8,960 11,856  
 (1,315) 1997  
 Brook Gardens  
 3,828 11,409  
 15,237  
 (1,575) 1998  
 Greenwood  
 Village 4,152  
 12,228 16,380  
 (1,482) 1998  
 Falcon Wood  
 Village 1,112  
 3,535 4,647  
 (512) 1997  
 Quail Hollow  
 0 3,351 3,351  
 (490) 1997  
 Shadowbrook  
 1,197 3,795  
 4,992 (577)



1997 Green  
 Acres 2,680  
 9,628 12,308  
 (4,016) 1988  
 Fun n Sun RV  
 Park 2,533  
 8,414 10,947  
 (1,155) 1998  
 All Seasons  
 510 1,786  
 2,296 (274)  
 1997 Westwood  
 Village 1,346  
 5,209 6,555  
 (745) 1997  
 Meadows of  
 Chantilly  
 5,430 18,067  
 23,497  
 (4,707) 1994  
 Kloshe  
 Illahee 2,408  
 7,369 9,777  
 (1,072) 1997  
 Independence  
 Hill 299  
 1,157 1,456  
 (450) 1990  
 College  
 Heights  
 Consolidated  
 (18  
 properties)  
 17,045 71,875  
 88,920  
 (8,387) 1998  
 Management  
 Business 0  
 7,978 7,978  
 (5,700) 1990  
 -----  
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 -----  
 \$271,871  
 \$966,267  
 \$1,238,138  
 \$(211,878)  
 =====  
 =====  
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NOTES:

- (1) For depreciable property, the Company uses a 30-year estimated life for buildings acquired and structural and land improvements, a ten-to-fifteen year estimated life for building upgrades and a three-to-seven year estimated life for furniture and fixtures.
- (2) The schedule excludes five Properties in which the Company has a non-controlling joint venture interest and accounts for using the equity method of accounting.
- (3) The balance of furniture and fixtures included in the total amounts was approximately \$12.2 million as of December 31, 2001.
- (4) The aggregate cost of land and depreciable property for Federal income tax purposes was approximately \$1.1 billion, as of December 31, 2001.
- (5) All Properties were acquired, except for Country Place Village, which was constructed.

SCHEDULE III  
 MANUFACTURED HOME COMMUNITIES, INC.  
 REAL ESTATE AND ACCUMULATED DEPRECIATION  
 DECEMBER 31, 2001  
 (AMOUNTS IN THOUSANDS)

The changes in total real estate for the years ended December 31, 2001, 2000 and 1999 were as follows:

2001	2000	1999	-----	-
-----				
Balance, beginning of				
	year....	\$1,218,176		
\$1,264,343	\$1,237,431			
Acquisitions(1).....				
17,770	(4,581)	12,496		
Improvements.....				
23,140	16,261	16,700		
Dispositions(2) and				
other... (20,948)	(57,847)			
(2,284)	-----			
--	-----	Balance, end		
	of year.....			
\$1,238,138	\$1,218,176			
\$1,264,343	=====			
=====	=====			

- (1) Acquisitions for the year ended December 31, 2000 include return of escrow proceeds.
- (2) Dispositions for 2000 include the non-cash assumption of \$19.0 million of debt by the purchaser of a Property.

The changes in accumulated depreciation for the years ended December 31, 2001, 2000 and 1999 were as follows:

2001	2000	1999	-----
-----			
Balance,			
	beginning of		
	year....	\$181,580	
	\$150,757		
	\$118,021		
Depreciation			
expense.....			
35,205	35,548		
35,020			
Dispositions			
and other.....			
(4,907)	(4,725)		
(2,284)	-----		
----	-----	Balance,	
	end of		
year.....			
\$211,878			
\$181,580			
\$150,757			
=====			
=====			
=====			

TERM LOAN CREDIT AGREEMENT

AMONG

MHC OPERATING LIMITED PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP,  
AS BORROWER,

MANUFACTURED HOME COMMUNITIES, INC.,  
A MARYLAND CORPORATION,  
THE REIT,

WELLS FARGO BANK, N.A.,

BANK OF AMERICA, N.A.,  
COMMERZBANK AKTIENGESELLSCHAFT,  
NEW YORK BRANCH,

AND

JP MORGAN CHASE BANK  
(SUCCESSOR BY MERGER TO MORGAN GUARANTY TRUST COMPANY OF NEW YORK)

TOGETHER WITH THOSE ASSIGNEES  
BECOMING PARTIES HERETO PURSUANT  
TO SECTION 10.11, AS LENDERS,

WELLS FARGO BANK, N.A.,  
AS AGENT AND SOLE LEAD ARRANGER

BANK OF AMERICA, N.A., AS SYNDICATION AGENT,  
COMMERZBANK AKTIENGESELLSCHAFT, NEW YORK BRANCH, AS  
DOCUMENTATION AGENT

AND

JP MORGAN CHASE BANK,  
AS DOCUMENTATION AGENT

DATED AS OF FEBRUARY 11, 2002

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TERM LOAN CREDIT AGREEMENT

THIS TERM LOAN CREDIT AGREEMENT is dated as of February \_\_, 2002, (as amended, supplemented or modified from time to time, the "Agreement") and is among MHC Operating Limited Partnership, an Illinois limited partnership ("Borrower"), Manufactured Home Communities, Inc., a Maryland corporation (the "REIT"), each of the Lenders, as hereinafter defined, and Wells Fargo Bank, N.A. ("Wells Fargo") in its capacity as Agent, as Sole Lead Arranger and as a Lender, Bank of America, N.A. , as Syndication Agent and as a Lender, Commerzbank Aktiengesellschaft, New York Branch, as Documentation Agent and as a Lender, and JP Morgan Chase Bank (successor by merger to Morgan Guaranty Trust Company of New York), as Documentation Agent and as a Lender.

RECITALS

A. Borrower desires to borrow, and the Lenders desire to lend, One Hundred Million Dollars (\$100,000,000) in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

ARTICLE I

DEFINITIONS

1.01 Certain Defined Terms. The following terms used in this Agreement shall have the following meanings (such meanings to be applicable, except to the extent otherwise indicated in a definition of a particular term, both to the singular and the plural forms of the terms defined):

"Accommodation Obligations" as applied to any Person, means any obligation, contingent or otherwise, of that Person in respect of which that Person is liable for any Indebtedness or other obligation or liability of another Person, including without limitation and without duplication (i) any such Indebtedness, obligation or liability directly or indirectly guaranteed, endorsed (otherwise than for collection or deposit in the ordinary course of business), co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable, including Contractual Obligations (contingent or otherwise) arising through any agreement to purchase, repurchase or otherwise acquire such Indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency, assets, level of income, or other financial condition, or to make payment other than for value received and (ii) any obligation of such Person arising through such Person's status as a general partner of a general or limited

partnership with respect to any Indebtedness, obligation or liability of such general or limited partnership.

"Accountants" means any nationally recognized independent accounting firm.

"Adjusted Asset Value" means, as of any date of determination, (i) for any Property for which an acquisition or disposition by Borrower or any Subsidiary has not occurred in the Fiscal Quarter most recently ended as of such date, the product of four (4) and a fraction, the numerator of which is EBITDA for such Fiscal Quarter attributable to such Property in a manner reasonably acceptable to Agent, and the denominator of which is eight hundred seventy-five ten-thousandths (0.0875), and (ii) for any Property which has been acquired by Borrower or any Subsidiary in the Fiscal Quarter most recently ended as of such date, the Net Price of the Property paid by Borrower or such Subsidiary for such Property.

"Affiliates" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means (a) the possession, directly or indirectly, of the power to vote twenty-five percent (25%) or more of the Securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise, (b) the ownership of a general partnership interest in such Person or (c) the ownership of twenty-five percent (25%) or more of the limited partnership interests (or other ownership interests with similarly limited voting rights) in such Person; provided, however, that in no event shall the Affiliates of Borrower or any Subsidiary or any Investment Affiliate include Persons holding direct or indirect ownership interests in the REIT or any other real estate investment trust which holds a general partnership interest in Borrower if such Person does not otherwise constitute an "Affiliate" hereunder; provided, further, that the REIT and Borrower shall at all times be deemed Affiliates of each other.

"Agent" means Wells Fargo in its capacity as administrative agent for the Lenders under this Agreement, and shall include any successor Agent appointed pursuant hereto and shall be deemed to refer to Wells Fargo in its individual capacity as a Lender where the context so requires.

"Agreement" has the meaning ascribed to such term in the preamble hereto.

"Agreement Party" means any Person, other than the REIT and Borrower, which concurrently with the execution of this Agreement or hereafter executes and delivers a guaranty in connection with this Agreement, which as of the date of determination, is in force and effect.

"Assignment and Assumption" means an Assignment and Assumption in the form of Exhibit A hereto (with blanks appropriately filled in) delivered to Agent in connection with each assignment of a Lender's interest under this Agreement pursuant to Section 10.11.



"Applicable Margin" means, for any day, the rate per annum set forth below opposite the applicable Level Period then in effect:

Level Period -----	Applicable Margin -----
Level I Period	1.25%
Level II Period	1.375%

The Applicable Margin shall be adjusted for all purposes quarterly as soon as reasonably practicable, but not later than five (5) days after the date of receipt by Agent of the quarterly financial information in accordance with the provisions of Section 5.01(a) hereof, together with a calculation by Borrower of the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries as of the end of the applicable Fiscal Quarter. No adjustment in the Applicable Margin shall be made retroactively.

"Balloon Payment" means, with respect to any loan constituting Indebtedness, any required principal payment of such loan which is either (i) payable at the maturity of such loan or (ii) in an amount which exceeds twenty-five percent (25%) of the original principal amount of such loan; provided, however, that the final payment of a fully amortizing loan shall not constitute a Balloon Payment.

"Base Rate" means, on any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall at all times be equal to the higher of (a) the base rate of interest per annum established from time to time by Wells Fargo, and designated as its prime rate and in effect on such day, and (b) the Federal Funds Rate as announced by the Federal Reserve Bank of New York in effect on such day plus one half percent (0.5%) per annum. Each change in the Base Rate shall become effective automatically as of the opening of business on the date of such change in the Base Rate, without prior written notice to Borrower or Lenders. The Base Rate may not be the lowest rate of interest charged by any bank, Agent or Lender on similar loans.

"Base Rate Loans" means that portion of the Loan bearing interest at the Base Rate.

"Base Rent" means the aggregate rent received, on a consolidated basis, by Borrower or any Subsidiary from tenants which lease manufactured home community sites owned by Borrower or any Subsidiary minus any amounts specifically identified as and representing payments for trash removal, cable television, water, electricity, other utilities, taxes, and other rent which reimburses expenses related to the tenant's occupancy.

"Benefit Plan" means any employee pension benefit plan as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) which a Person or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or, within the immediately

preceding five (5) years, maintained, administered, contributed to or was required to contribute to, or under which a Person or any ERISA Affiliate may have any liability.

"Borrower" has the meaning ascribed to such term in the preamble hereto.

"Borrower Plan" shall mean any Plan (A) which Borrower, any of its Subsidiaries or any of its ERISA Affiliates maintains, administers, contributes to or is required to contribute to, or, within the five years prior to the Closing Date, maintained, administered, contributed to or was required to contribute to, or under which Borrower, any of its Subsidiaries or any of its ERISA Affiliates may incur any liability and (B) which covers any employee or former employee of Borrower, any of its Subsidiaries or any of its ERISA Affiliates (with respect to their relationship with such entities).

"Borrower's Share" means Borrower's and/or the REIT's collective direct or indirect share of the assets, liabilities, income, expenses or expenditures, as applicable, of an Investment Affiliate based upon Borrower's and/or the REIT's percentage ownership (whether direct or indirect) of such Investment Affiliate, as the case may be.

"Business Day" means (a) with respect to any payment or rate determination of LIBOR Loans, a day, other than a Saturday or Sunday, on which Agent is open for business in Chicago and San Francisco and on which dealings in Dollars are carried on in the London inter bank market, and (b) for all other purposes any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the States of California and Illinois, or is a day on which banking institutions located in California and Illinois are required or authorized by law or other governmental action to close.

"Capital Expenditures" means, as applied to any Person for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities during that period and including that portion of Capital Leases which is capitalized on the balance sheet of a Person) by such Person during such period that, in conformity with GAAP, are required to be included in or reflected by the property, plant or equipment or similar fixed asset accounts reflected in the balance sheet of such Person, excluding any expenditures reasonably determined by such Person as having been incurred for expansion of the number of manufactured home sites at a manufactured home community owned by such Person.

"Capital Leases," as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States, in each case maturing within one (1) year after the date of acquisition thereof; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within ninety (90) days after the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from any two

nationally recognized rating services reasonably acceptable to Agent; (c) domestic corporate bonds, other than domestic corporate bonds issued by Borrower or any of its Affiliates, maturing no more than 2 years after the date of acquisition thereof and, at the time of acquisition, having a rating of at least A or the equivalent from two nationally recognized rating service reasonably acceptable to Agent; (d) variable-rate domestic corporate notes or medium term corporate notes, other than notes issued by Borrower or any of its Affiliates, maturing or resetting no more than 1 year after the date of acquisition thereof and having a rating of at least AA or the equivalent from two nationally recognized rating services reasonably acceptable to Agent; (e) commercial paper (foreign and domestic) or master notes, other than commercial paper or master notes issued by Borrower or any of its Affiliates, and, at the time of acquisition, having a long-term rating of at least A or the equivalent from a nationally recognized rating service reasonably acceptable to Agent and having a short-term rating of at least A-1 and P-1 from S&P and Moody's, respectively (or, if at any time neither S&P nor Moody's shall be rating such obligations, then the highest rating from such other nationally recognized rating services reasonably acceptable to Agent); (f) domestic and Eurodollar certificates of deposit or domestic time deposits or Eurotime deposits or bankers' acceptances (foreign or domestic) that are issued by a bank (I) which has, at the time of acquisition, a long-term rating of at least A or the equivalent from a nationally recognized rating service reasonably acceptable to Agent and (II) if a domestic bank, which is a member of the FDIC; and (g) overnight securities repurchase agreements, or reverse repurchase agreements secured by any of the foregoing types of securities or debt instruments, provided that the collateral supporting such repurchase agreements shall have a value not less than 101% of the principal amount of the repurchase agreement plus accrued interest.

"Closing Checklist" means the Closing Checklist attached hereto as Exhibit B, as the same may be amended by the parties.

"Closing Date" means the date on which this Agreement shall become effective in accordance with Section 11.19, which date shall be February \_\_, 2002 or such later date as to which Agent and Borrower agree in writing.

"Commission" means the Securities and Exchange Commission.

"Commitment" means, with respect to any Lender, the principal amount set out under such Lender's name under the heading "Loan Commitment" on the counterpart signature pages attached to this Agreement or as set forth on an Assignment and Assumption complying with Section 10.11 and executed by such Lender, as assignee, as such amount may be adjusted pursuant to the terms of this Agreement.

"Contaminant" means any pollutant (as that term is defined in 42 U.S.C. 9601(33)) or toxic pollutant (as that term is defined in 33 U.S.C. 1362(13)), hazardous substance (as that term is defined in 42 U.S.C. 9601(14)), hazardous chemical (as that term is defined by 29 C.F.R. Section 1910.1200(c)), toxic substance, hazardous waste (as that term is defined in 42 U.S.C. 6903(5)), radioactive material, special waste, petroleum (including crude oil or any petroleum-derived substance, waste, or breakdown or decomposition product thereof), or any constituent of any such substance or waste, including, but not limited to hydrocarbons (including

naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances, PCBs, pesticides, herbicides, asbestos, sewage sludge, industrial slag, acids, metals, or solvents.

"Continuation/Conversion Date" means, with respect to the continuation of a LIBOR Loan or the conversion of a Base Rate Loan into a LIBOR Loan, and vice versa, the date of such continuation or conversion.

"Contractual Obligation," as applied to any Person, means any provision of any Securities issued by that Person or any indenture, mortgage, deed of trust, lease, contract, undertaking, document or instrument to which that Person is a party or by which it or any of its properties is bound, or to which it or any of its properties is subject (including without limitation any restrictive covenant affecting such Person or any of its properties).

"Controlled Ownership Interests" means ownership interests in a Person where the REIT or Borrower (independently or collectively) has control over the management and operations of such Person.

"Convertible Securities" means evidences of indebtedness, shares of stock, limited or general partnership interests or other ownership interests, warrants, options, or other rights or securities which are convertible into or exchangeable for, with or without payment of additional consideration, shares of common stock of the REIT or partnership interests of Borrower, as the case may be, either immediately or upon the arrival of a specified date or the happening of a specified event.

"Court Order" means any judgment, writ, injunction, decree, rule or regulation of any court or Governmental Authority binding upon the Person in question.

"Debt Service" means, for any period, Interest Expense for such period, plus scheduled principal amortization (exclusive of Balloon Payments) for such period on all Indebtedness of the REIT, on a consolidated basis.

"Development Activity" means construction in process, that is being performed by or at the direction of Borrower, any Subsidiary or any Investment Affiliate, of any manufactured home community that will be owned and operated by Borrower, any Subsidiary or any Investment Affiliate upon completion of construction, including construction in process of manufactured home communities not owned by Borrower, any Subsidiary or any Investment Affiliate but which Borrower, any Subsidiary or any Investment Affiliate has the contractual obligation to purchase, but excluding construction in process for the purpose of expanding manufactured home communities that have been operated for at least one (1) year prior to the commencement of such expansion.

"Documentation Agent" means Commerzbank Aktiengesellschaft, New York Branch and JP Morgan Chase Bank, each in its capacity as a documentation agent for the Lenders under this Agreement.

"DOL" means the United States Department of Labor and any successor department or agency.

"Dollars" and "\$" means the lawful money of the United States of America.

"EBITDA" means, for any period and without duplication, (i) Net Income for such period, plus (ii) depreciation and amortization expense and other non-cash items deducted in the calculation of Net Income for such period, plus (iii) Interest Expense deducted in the calculation of Net Income for such period, plus, (iv) Taxes deducted in the calculation of Net Income for such period, minus (v) the gains (and plus the losses) from extraordinary or unusual items or asset sales or write-ups or forgiveness of indebtedness included in the calculation of Net Income for such period, minus (vi) earnings of Subsidiaries for such period distributed to third parties, plus (or minus in the case of a loss) (vii) Borrower's Share of the net income (or loss) of each Investment Affiliate for such period calculated in conformity with GAAP before depreciation, minus (or plus in the case of a loss) (viii) Borrower's Share of the gains (or losses) from extraordinary or unusual items or asset sales or write-ups or forgiveness of indebtedness included in the calculation of the net income of each Investment Affiliate for such period.

"Environmental Laws" means all federal, state, district, local and foreign laws, and all orders, consent orders, judgments, notices, permits or demand letters issued, promulgated or entered thereunder, relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or industrial substances or Contaminants into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contamination, chemicals, industrial substances or Contaminants. The term Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Toxic Substances Control Act, as amended; the Hazardous Materials Transportation Act, as amended; the Resource Conservation and Recovery Act, as amended ("RCRA"); the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; the Clean Air Act, as amended; all analogous state laws; the plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar laws, regulations, rules or ordinances now or hereafter in effect regulating public health, welfare or the environment.

"Environmental Lien" means a Lien in favor of any Governmental Authority for (a) any liability under federal or state Environmental Laws or regulations, or (b) damages arising from, or costs incurred by such Governmental Authority in response to, a Release or threatened Release of a Contaminant into the environment

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

"ERISA Affiliate" means any (a) corporation which is, becomes, or is deemed by any Governmental Authority to be a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Internal Revenue Code) as a Person or is so deemed by such Person, (b) partnership, trade or business (whether or not incorporated) which is, becomes or is deemed by any Governmental Authority to be under common control (within the meaning of Section 414(c) of the Internal Revenue Code) with such Person or is so deemed by such Person, (c) any Person which is, becomes or is deemed by any Governmental Authority to be a member of the same "affiliated service group" (as defined in Section 414(m) of the Internal Revenue Code) as such Person or is so deemed by such Person, or (d) any other organization or arrangement described in Section 414(o) of the Internal Revenue Code which is, becomes or is deemed by such Person or by any Governmental Authority to be required to be aggregated pursuant to regulations issued under Section 414(o) of the Internal Revenue Code with such Person pursuant to Section 414(o) of the Internal Revenue Code or is so deemed by such Person.

"Event of Default" means any of the occurrences set forth in Article IX after the expiration of any applicable grace period expressly provided therein.

"Facility" means the loan facility of One Hundred Million Dollars (\$100,000,000) described in Section 2.01(a).

"FDIC" means the Federal Deposit Insurance Corporation or any successor thereto.

"Federal Funds Rate" means, for any period, a fluctuating interest rate, rounded upwards to the nearest one hundredth of one percent (0.01%), per annum equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal Funds brokers of recognized standing selected by Agent.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any governmental authority succeeding to its functions.

"Financial Statements" has the meaning ascribed to such term in Section 5.01(a).

"First Extended Maturity Date" has the meaning ascribed to such term in Section 2.09(a).

"Fiscal Quarter" means a fiscal quarter of a Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and the REIT, which shall be the twelve (12) month period ending on the last day of December in each year.

"Fixed Charges" for any Fiscal Quarter period means the sum of (i) Debt Service for such period, (ii) 3% of Base Rent for such period, and (iii) Borrower's Share of Capital Expenditures from each Investment Affiliate for such period.

"Funds from Operations" means the definition of "Funds from Operations" of the National Association of Real Estate Investment Trusts on the date of determination (before allocation to minority interests).

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination and which are consistent with the past practices of the REIT and Borrower.

"Governmental Authority" means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gross Asset Value" means, with respect to any Person as of any date of determination, the sum of the Adjusted Asset Values for each Property then owned by such Person plus the value of any cash or Cash Equivalent owned by such Person and not subject to any Lien.

"Indebtedness," as applied to any Person (and without duplication), means (a) all indebtedness, obligations or other liabilities (whether secured, unsecured, recourse, non-recourse, direct, senior or subordinate) of such Person for borrowed money, (b) all indebtedness, obligations or other liabilities of such Person evidenced by Securities or other similar instruments, (c) all reimbursement obligations and other liabilities of such Person with respect to letters of credit or banker's acceptances issued for such Person's account or other similar instruments for which a contingent liability exists, (d) all obligations of such Person to pay the deferred purchase price of Property or services, (e) all obligations in respect of Capital Leases of such Person, (f) all Accommodation Obligations of such Person, (g) all indebtedness, obligations or other liabilities of such Person or others secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are assumed by, or are a personal liability of, such Person, (h) all indebtedness, obligations or other liabilities (other than interest expense liability) in respect of Interest Rate Contracts and foreign currency exchange agreements, excluding all indebtedness, obligations or other liabilities in respect of such Interest Rate Contracts to the extent that the aggregate notional amount thereof does not exceed the aggregate principal amount of any outstanding fixed or floating rate Indebtedness, obligations or other liabilities permitted under this Agreement that exist as of the date that such Interest Rate Contracts are entered into or that are incurred no more than thirty (30) days after such Interest Rate Contracts are entered into and (i) ERISA obligations currently due and payable.

"Initial Maturity Date" means August 9, 2003.

"Interest Expense" means, for any period and without duplication, total interest expense, whether paid, accrued or capitalized (including loan and letter of credit fees and the interest component of Capital Leases but excluding interest expense covered by an interest reserve established under a loan facility) of the REIT, on a consolidated basis and determined in accordance with GAAP.

"Interest Period" means, relative to any LIBOR Loans, the period beginning on (and including) the date on which such LIBOR Loans are made as, or converted into, LIBOR Loans, and shall end on (but exclude) the day which numerically corresponds to such date one (1), two (2), three (3), six (6) or twelve (12) months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), in either case as Borrower may select in its relevant Notice of Continuation/Conversion pursuant to Section 2.01(b); provided, however, that:

(a) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day);

(b) no Interest Period may end later than the Termination Date; and

(c) with the reasonable approval of Agent (unless any Lender has previously advised Agent and Borrower that it is unable to enter into LIBOR contracts for an Interest Period of such duration), an Interest Period may have a duration of less than one (1) month.

"Interest Rate Contracts" means, collectively, interest rate swap, collar, cap or similar agreements providing interest rate protection.

"Interim Period" has the meaning ascribed to such term in Section 3.01(g).

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Investment" means, as applied to any Person, any direct or indirect purchase or other acquisition by that Person of Securities, or of a beneficial interest in Securities, of any other Person, and any direct or indirect loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, advances to employees and similar items made or incurred in the ordinary course of business), or capital contribution by such Person to any other Person, including all Indebtedness and accounts owed by that other Person which are not current assets or did not arise from sales of goods or services to that Person in the ordinary course of business. The amount of any Investment shall be determined in conformity with GAAP except as otherwise specifically provided herein.

"Investment Affiliate" means any Person in whom the REIT, Borrower or any Subsidiary holds an equity interest, directly or indirectly, whose financial results are not



consolidated under GAAP with the financial results of the REIT or Borrower on the consolidated financial statements of the REIT and Borrower.

"Investment Mortgages" means mortgages securing indebtedness directly or indirectly owed to Borrower or any of its Subsidiaries, including certificates of interest in real estate mortgage investment conduits.

"IRS" means the Internal Revenue Service and any Person succeeding to the functions thereof.

"Land" means unimproved real estate purchased or leased or to be purchased or leased by Borrower or any of its Subsidiaries for the purpose of future development of improvements.

"Lender Affiliate" as applied to any Lender, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Lender. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means (a) the possession, directly or indirectly, of the power to vote more than fifty percent (50%) of the Securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise, or (b) the ownership of a general partnership interest or a limited partnership interest representing more than fifty (50%) of the outstanding limited partnership interests of a Person.

"Lender Reply Period" has the meaning ascribed to such term in Section 10.10(a). "Lender Taxes" has the meaning ascribed to such term in Section 2.03(g).

"Lenders" means Wells Fargo and any other bank, finance company, insurance or other financial institution which is or becomes a party to this Agreement by execution of a counterpart signature page hereto or an Assignment and Assumption, as assignee.

"Level I Period" means a period during which the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries shall be equal to or less than 0.45:1.

"Level II Period" means a period during which the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries shall exceed 0.45:1 but shall not exceed 0.60:1.

"Liabilities and Costs" means all claims, judgments, liabilities, obligations, responsibilities, losses, damages (including punitive and treble damages), costs, disbursements and expenses (including without limitation reasonable attorneys', experts' and consulting fees and costs of investigation and feasibility studies), fines, penalties and monetary sanctions, and interest, direct or indirect, known or unknown, absolute or contingent, past, present or future.

"LIBOR" means, relative to any Interest Period for any LIBOR Loan, the rate of interest obtained by dividing (i) the rate of interest determined by Agent (whose determination shall be conclusive absent manifest error, which shall not include any lower determination by any other banks) equal to the rate (rounded upwards, if necessary, to the nearest one one-hundredth of one percent (.01%)) per annum reported by Wells Fargo at which Dollar deposits in immediately available funds are offered by Wells Fargo to leading banks in the Eurodollar inter bank market at or about 11:00 AM London time two (2) Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount equal or comparable to the LIBOR Loan to which such Interest Period relates, by (ii) a percentage expressed as a decimal equal to one (1) minus the LIBOR Reserve Percentage.

"LIBOR Loans" means those portions of the Loan bearing interest, at all times during an Interest Period applicable to such portion, at a fixed rate of interest determined by reference to LIBOR.

"LIBOR Reserve Percentage" means, relative to any Interest Period, the average daily maximum reserve requirement (including, without limitation, all basic, emergency, supplemental, marginal and other reserves) which is imposed under Regulation D, as Regulation D may be amended, modified or supplemented, on "Eurocurrency liabilities" having a term equal to the applicable Interest Period (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of any bank to United States residents), which requirement shall be expressed as a decimal. LIBOR shall be adjusted automatically on, and as of the effective date of, any change in the LIBOR Reserve Percentage.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights-of-way, zoning restrictions and the like), lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including without limitation any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement (other than a financing statement filed by a "true" lessor pursuant to Section 9-408 of the Uniform Commercial Code) naming the owner of the asset to which such Lien relates as debtor, under the Uniform Commercial Code or other comparable law of any jurisdiction.

"Loan" means the One Hundred Million Dollar (\$100,000,000) loan made pursuant to this Agreement.

"Loan Documents" means, this Agreement, the Loan Notes, the REIT Guaranty, and all other agreements, instruments and documents (together with amendments and supplements thereto and replacements thereof) now or hereafter executed by the REIT, Borrower or any Agreement Party, which evidence, guaranty or secure the Obligations.

"Loan Notes" means the promissory notes evidencing the Loan in the aggregate original principal amount of One Hundred Million Dollars (\$100,000,000) executed by Borrower in favor of Lenders, as they may be amended, supplemented, replaced or modified from time to time. The initial Loan Notes and any replacements thereof shall be substantially in the form of Exhibit D.

"Manufactured Home Community Mortgages" means Investment Mortgages issued by any Person engaged primarily in the business of developing, owning, and managing manufactured home communities.

"Manufactured Home Community Ownership Interests" means partnership, joint venture, membership or other equity interests issued by any Person engaged primarily in the business of developing, owning, and managing manufactured home communities.

"Material Adverse Effect" means a material adverse effect upon (i) the ability of Borrower or the REIT to perform its covenants and obligations under this Agreement and the other Loan Documents or (ii) the ability of Agent or Lenders to enforce the Loan Documents. The phrase "has a Material Adverse Effect" or "will result in a Material Adverse Effect" or words substantially similar thereto shall in all cases be intended to mean "has or will result in a Material Adverse Effect," and the phrase "has no (or does not have a) Material Adverse Effect" or "will not result in a Material Adverse Effect" or words substantially similar thereto shall in all cases be intended to mean "does not or will not result in a Material Adverse Effect."

"Maturity Date" means the Initial Maturity Date, as such date may be extended pursuant to Section 2.09.

"Minimum Net Worth" means Three Hundred Fifty-Eight Million Dollars (\$358,000,000), plus ninety percent (90%) of all Net Offering Proceeds received by the REIT or Borrower after the Closing Date, minus ninety percent (90%) of the aggregate cost to the REIT or Borrower for the repurchase of any common stock, preferred stock, partnership interests, limited liability company interests, Convertible Securities or other ownership or equity interests in the REIT or Borrower; provided, however, that in no event shall the Minimum Net Worth be less than Three Hundred Twenty Two Million Dollars (\$322,000,000).

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by Agent.

"Multiemployer Plan" means an employee benefit plan defined in Section 4001(a)(3) or Section 3(37) of ERISA which is, or within the immediately preceding six (6) years was, maintained, administered, contributed to by or was required to be contributed to by a Person or any ERISA Affiliate, or under which a Person or any ERISA Affiliate may incur any liability.

"Net Income" means, for any period, the net income (or loss) after Taxes of the REIT, on a consolidated basis, for such period calculated in conformity with GAAP; provided, however, that Net Income shall not include the net income (or loss) of Investment Affiliates.

"Net Offering Proceeds" means all cash or other assets received by the REIT or Borrower as a result of the sale of common stock, preferred stock, partnership interests, limited liability company interests, Convertible Securities or other ownership or equity interests in the REIT or Borrower less customary costs and discounts of issuance paid by the REIT or Borrower, as the case may be.

"Net Operating Income" means, for any period, and with respect to any Qualifying Unencumbered Property, the net operating income of such Qualifying Unencumbered Property (attributed to such Property in a manner reasonably acceptable to Agent) for such period (i) determined in accordance with GAAP, (ii) determined in a manner which is consistent with the past practices of the REIT and Borrower, and (iii) inclusive of an allocation of reasonable management fees and administrative costs to such Qualifying Unencumbered Property consistent with the past practices of the REIT and Borrower, except that, for purposes of determining Net Operating Income, income shall not (a) include security or other deposits, lease termination or other similar charges, delinquent rent recoveries, unless previously reflected in reserves, or any other items reasonably deemed by Agent to be of a non-recurring nature or (b) be reduced by depreciation or amortization or any other non-cash item.

"Net Price" means, with respect to the purchase of any Property by Borrower or any Subsidiary, without duplication, (i) cash and Cash Equivalents paid as consideration for such purchase, plus (ii) the principal amount of any note or other deferred payment obligation delivered in connection with such purchase (except as described in clause (iv) below), plus (iii) the value of any other consideration delivered in connection with such purchase or sale (including, without limitation, shares in the REIT and operating partnership units or preferred operating partnership units in Borrower) (as reasonably determined by Agent), minus (iv) the value of any consideration deposited into escrow or subject to disbursement or claim upon the occurrence of any event, minus (v) reasonable costs of sale and taxes paid or payable in connection with such purchase.

"Net Worth" means, at any time, the tangible net worth of the REIT determined in accordance with GAAP, on a consolidated basis, not including depreciation and amortization expense of the REIT since September 30, 2001 and not including the REIT's share of depreciation and amortization expense of Investment Affiliates since September 30, 2001.

"Non-Manufactured Home Community Property" means Property which is not (i) used for lease or operation of manufactured home communities, (ii) Land, (iii) Securities consisting of stock issued by real estate investment trusts engaged primarily in the development, ownership and management of manufactured home communities, (iv) Manufactured Home Community Mortgages, (v) Manufactured Home Community Ownership Interests or (vi) Taxable REIT Subsidiary Interests.

"Non-Recourse Indebtedness" means any single loan with respect to which recourse for payment is limited to specific assets related to a particular Property or group of Properties encumbered by a Lien securing such Indebtedness, so long as the Adjusted Asset Value for such Property, or the total of the Adjusted Asset Values for such group of Properties, does not exceed One Hundred Million Dollars (\$100,000,000); provided, however, that personal recourse to the REIT, Borrower or any Subsidiary by a holder of any such loan for fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financing of real estate shall not, by itself, prevent such loan from being characterized as Non-Recourse Indebtedness.

"Notice of Borrowing" means a notice of borrowing duly executed by an authorized officer of Borrower substantially in the form of Exhibit E-1.

"Notice of Continuation/Conversion" means a notice of continuation or conversion of or to a LIBOR Loan duly executed by an authorized officer of Borrower substantially in the form of Exhibit E-2.

"Obligations" means, from time to time, all Indebtedness of Borrower owing to Agent, any Lender, or any Person entitled to indemnification pursuant to Section 11.02, or any of their respective successors, transferees or assigns, of every type and description, whether or not evidenced by any note, guaranty or other instrument, arising under or in connection with this Agreement or any other Loan Document, whether or not for the payment of money, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired. The term includes, without limitation, all interest, charges, expenses, fees, reasonable attorneys' fees and disbursements and any other sum now or hereafter chargeable to Borrower under or in connection with this Agreement or any other Loan Document. Notwithstanding anything to the contrary contained in this definition, Obligations shall not be deemed to include any obligations or liabilities of Borrower to Agent or any Lender under an Interest Rate Contract, foreign currency exchange agreement or other Contractual Obligation unless the same is among Borrower and all Lenders. Obligations shall also not include the "Obligations" under the Revolving Credit Agreement.

"Officer's Certificate" means a certificate signed by a specified officer of a Person certifying as to the matters set forth therein.

"Other Indebtedness" means all Indebtedness other than the Obligations.

"PBGCC" means the Pension Benefit Guaranty Corporation or any Person succeeding to the functions thereof.

"Permit" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"Permitted Holdings" means any of the holdings and activities described in Section 8.08, but only to the extent permitted in Section 8.08.

"Permitted Liens" means:

(a) Liens for Taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with Sections 6.01(d) or 6.02(g);

(b) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than sixty (60) days delinquent or which are being contested in good faith in accordance with Sections 6.01(d) or 6.02(g);

(c) deposits made in the ordinary course of business to secure liabilities to insurance carriers;

(d) Liens for purchase money obligations for equipment; provided that (i) the Indebtedness secured by any such Lien does not exceed the purchase price of such equipment, (ii) any such Lien encumbers only the asset so purchased and the proceeds upon sale, disposition, loss or destruction thereof, and (iii) such Lien, after giving effect to the Indebtedness secured thereby, does not give rise to an Event of Default or Unmatured Event of Default pursuant to Section 7.01(a);

(e) easements, rights-of-way, zoning restrictions, other similar charges or encumbrances and all other items listed on Schedule B to Borrower's or any Subsidiary's owner's title insurance policies for any of Borrower's or any Subsidiary's, as applicable, real Properties, so long as the foregoing do not interfere in any material respect with the use or ordinary conduct of the business of Borrower or such Subsidiary, as applicable, and do not diminish in any material respect the value of the Property to which it is attached or for which it is listed; or

(f) Liens and judgments which have been or will be bonded or released of record within thirty (30) days after the date such Lien or judgment is entered or filed against the REIT, Borrower, any Subsidiary or any Agreement Party.

"Person" means any natural person, employee, corporation, limited partnership, limited liability partnership, general partnership, joint stock company, limited liability company, joint venture, association, company, trust, bank, trust company, land trust, business trust, real estate investment trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

"Plan" means an employee benefit plan defined in Section 3(3) of ERISA (other than a Multiemployer Plan) in respect of which a Person or an ERISA Affiliate, as applicable, is an "employer" as defined in Section 3(5) of ERISA.

"Pre-Closing Financials" has the meaning ascribed to such term in Section 4.01(g).

"Prior Credit Agreement" means that certain Amended and Restated Credit Agreement (Term Loan) dated as of April 28, 1998, by and among Borrower, the REIT and the financial institutions named therein, as heretofore amended.

"Pro Rata Share" means, with respect to any Lender, a fraction (expressed as a percentage), the numerator of which shall be the amount of such Lender's Commitment and the denominator of which shall be the aggregate amount of all of the Lenders' Commitments, as adjusted from time to time in accordance with the provisions of this Agreement.

"Property" means, with respect to any Person, any real or personal property, building, facility, structure, equipment or unit, or other asset owned by such Person.

"Qualifying Unencumbered Property" means (a) the Properties listed on Exhibit F hereto and (b) any Property designated by Borrower from time to time pursuant to Section 5.04 which (i) is an operating manufactured home community property wholly-owned (directly or beneficially) by Borrower or any Subsidiary wholly-owned, directly or indirectly by Borrower and/or the REIT, (ii) is not subject (nor are any direct or indirect equity interests in such Property subject) to a Lien which secures Indebtedness of any Person other than a Permitted Lien, (iii) is not subject (nor are any direct or indirect equity interests in such Property subject) to any covenant, condition, or other restriction which prohibits or limits the creation or assumption of any Lien upon such Property (except as set forth in the Revolving Credit Agreement), and (iv) has not been designated by Agent in a notice to Borrower as not acceptable to the Requisite Lenders pursuant to Section 5.04; provided, however, that the weighted average occupancy rate of the Properties listed on Exhibit F together with those designated by Borrower to be Qualifying Unencumbered Properties pursuant to Section 5.04 (excluding expansion areas of such Properties which are purchased and/or developed on or after the Closing Date) shall be at least eighty-five percent (85%); and provided, further, that Borrower may, upon at least fifteen (15) Business Days prior notice to Agent, designate that any Property listed on Exhibit F or otherwise designated as a Qualifying Unencumbered Property is no longer a Qualifying Unencumbered Property (and upon such designation, such Property shall no longer be a Qualifying Unencumbered Property).

"Recourse Indebtedness" means, with respect to any Person, Indebtedness which is not Non-Recourse Indebtedness.

"Regulation D" means Regulation D of the Federal Reserve Board as in effect from time to time.

"Regulation T" means Regulation T of the Federal Reserve Board as in effect from time to time.

"Regulation U" means Regulation U of the Federal Reserve Board as in effect from time to time.

"Regulation X" means Regulation X of the Federal Reserve Board as in effect from time to time.

"REIT" has the meaning ascribed to such term in the preamble hereto.

"REIT Guaranty" means the REIT Guaranty of even date herewith executed by the REIT in favor of Agent and the Lenders.

"Release" may be either a noun or a verb and means the release, spill, emission, leaking, pumping, pouring, emitting, emptying, escaping, dumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment or into or out of any property, including the movement of Contaminants through or in the air, soil, surface water, groundwater or property.

"Remedial Action" means any action undertaken pursuant to Environmental Laws to (a) clean up, remove, remedy, respond to, treat or in any other way address Contaminants in the indoor or outdoor environment; (b) prevent the Release or threat of Release or minimize the further Release of Contaminants so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"Reportable Event" means any of the events described in Section 4043(b) of ERISA, other than an event for which the thirty (30) day notice requirement is waived by regulations, or any of the events described in Section 4062(f) or 4063(a) of ERISA.

"Requirements of Law" means, as to any Person, the charter and by-laws, partnership agreements or other organizational or governing documents of such Person, and any law, rule or regulation, permit, or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including without limitation, the Securities Act, the Securities Exchange Act, Regulations T, U and X and any certificate of occupancy, zoning ordinance, building or land use requirement or Permit or occupational safety or health law, rule or regulation.

"Requisite Lenders" means, collectively, Lenders whose Pro Rata Shares, in the aggregate, are at least sixty-six and two-thirds percent (66 2/3%); provided, however, that the Requisite Lenders must be comprised of a minimum of two (2) Lenders; and provided, further, that for purposes of any amendment, modification or waiver of the requirements of Article VIII, the Requisite Lenders must include Agent in its capacity as a Lender.

"Revolving Credit Agreement" means that certain Second Amended and Restated Credit Agreement dated as of April 28, 1998 by and among Borrower, the REIT, Wells Fargo, as Agent, and the lenders named therein, as heretofore and hereafter amended or amended and restated.

"S&P" means Standard & Poor's Rating Group, a division of McGraw Hill, its successors and assigns, and, if Standard & Poor's Rating Group shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by Agent.



"Second Extended Maturity Date" has the meaning ascribed to such term in Section 2.09(b).

"Secretary's Certificate" has the meaning ascribed to such term in Section 3.01(c)(i).

"Secured Debt" means Indebtedness, the payment of which is secured by a Lien on any real Property owned or leased by the REIT, Borrower, or any Subsidiary.

"Securities" means any stock, partnership interests, shares, shares of beneficial interest, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities," or any certificates of interest, shares, or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing, but shall not include any evidence of the Obligations.

"Securities Act" means the Securities Act of 1933, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Sole Lead Arranger" means Wells Fargo Bank, N.A. in its capacity as sole lead arranger for the Lenders under this Agreement.

"Solvent" means as to any Person at the time of determination, such Person (a) owns property the value of which (both at fair valuation and at present fair saleable value) is greater than the amount required to pay all of such Person's liabilities (including contingent liabilities and debts); (b) is able to pay all of its debts as such debts mature; and (c) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage.

"Subsidiary" means any Person whose financial results are consolidated under GAAP with the financial results of the REIT or Borrower on the consolidated financial statements of the REIT or Borrower.

"Supermajority Lenders" means Lenders whose Pro Rata Shares, in the aggregate, are at least eighty-five percent (85%); provided, however, that the Supermajority Lenders must be comprised of a minimum of two (2) Lenders; and provided, further, that for purposes of any amendment, modification or waiver of the requirements of Article VIII, the Supermajority Lenders must include Agent in its capacity as a Lender.

"Syndication Agent" means Bank of America National Trust and Savings Association in its capacity as syndication agent for the Lenders under this Agreement.

"Taxable REIT Subsidiary Interest" means equity interests in Subsidiaries not engaged in the development, ownership or operation of real estate and permitted to be held by Borrower and the REIT pursuant to Section 856(1) of the Internal Revenue Code (as amended from time to time) without violating the REIT's status as a real estate investment trust.

"Taxes" means all federal, state, local and foreign income and gross receipts taxes.

"Termination Date" has the meaning ascribed to such term in Section 2.01(d).

"Termination Event" means (a) any Reportable Event, (b) the withdrawal of a Person, or an ERISA Affiliate from a Benefit Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a) (2) of ERISA, (c) the occurrence of an obligation arising under Section 4041 of ERISA of a Person or an ERISA Affiliate to provide affected parties with a written notice of an intent to terminate a Benefit Plan in a distress termination described in Section 4041(c) of ERISA, (d) the institution by the PBGC of proceedings to terminate any Benefit Plan under Section 4042 of ERISA or to appoint a trustee to administer any Benefit Plan, (e) any event or condition which constitutes grounds under Section 4042 of ERISA for the appointment of a trustee to administer a Benefit Plan, (f) the partial or complete withdrawal of such Person or any ERISA Affiliate from a Multiemployer Plan which would have a Material Adverse Effect, or (g) the adoption of an amendment by any Person or any ERISA Affiliate to terminate any Benefit Plan which is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code or the treatment of an amendment to a Benefit Plan as a termination under ERISA.

"Total Liabilities" means, without duplication, all Indebtedness of the REIT on a consolidated basis, plus all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of the REIT, on a consolidated basis, and in any event shall include recourse and non-recourse mortgage debt, letters of credit, purchase obligations, forward equity sales, repurchase obligations, unsecured debt, accounts payable, lease obligations (including ground leases) to the extent required, in accordance with GAAP, to be classified as capital leases on the balance sheet of the REIT, guarantees of indebtedness, subordinated debt and unfunded obligations; provided, however, that "Total Liabilities" shall not include dividends declared by the REIT or Borrower which are permitted under Section 7.01(d) but not yet paid.

"Unencumbered Asset Value" means, as of any date of determination, (i) a fraction, the numerator of which is the product of four (4) and the Net Operating Income for the most recently ended Fiscal Quarter which is attributable (in a manner reasonably acceptable to Agent) to Qualifying Unencumbered Properties wholly-owned (directly or beneficially) by Borrower or any Subsidiary wholly-owned, directly or indirectly, by Borrower and/or the REIT, for the entire Fiscal Quarter and the denominator of which is eight hundred seventy-five ten-thousandths (0.0875) plus (ii) the aggregate of the Net Prices paid by Borrower or such Subsidiary for all Qualifying Unencumbered Properties which have been acquired in the Fiscal Quarter most recently ended.

"Unencumbered Net Operating Income" means for any Fiscal Quarter, Net Operating Income for such period from each Qualifying Unencumbered Property.

"Unfunded Pension Liabilities" means the excess of a Benefit Plan's accrued benefits, as defined in Section 3(23) of ERISA, over the current value of that Plan's assets, as defined in Section 3(26) of ERISA.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect on the date hereof in the State of Illinois.

"Unmatured Event of Default" means an event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default.

"Unsecured Debt" means, as of any date of determination and without duplication, all Indebtedness of the REIT, Borrower or any Subsidiary, which is not Secured Debt plus all accounts payable of the REIT, Borrower or any Subsidiary incurred in the ordinary course of business, the payment of which is not secured by a Lien on any property owned or leased by the REIT, Borrower or any Subsidiary.

"Unsecured Interest Expense" means Interest Expense other than Interest Expense payable in respect of Secured Debt.

"Welfare Plan" means any "employee welfare benefit plan" as defined in Section 3(1) of ERISA, which a Person or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or within the immediately preceding five years maintained, administered, contributed to or was required to contribute to, or under which a Person or any ERISA Affiliate may incur any liability.

"Wells Fargo" has the meaning ascribed to such term in the preamble hereto.

"Wholly-Owned Subsidiary" means any Subsidiary which is wholly-owned directly or indirectly by Borrower or the REIT.

1.02 Computation of Time Periods. In this Agreement, unless otherwise specified, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to and including." Periods of days referred to in this Agreement shall be counted in calendar days unless Business Days are expressly prescribed.

#### 1.03 Terms

(a) Any accounting terms used in this Agreement which are not specifically defined shall have the meanings customarily given them in accordance with GAAP, provided that for purposes of references to the financial results of the "REIT, on a consolidated basis," the REIT shall be deemed to own one hundred percent (100%) of the partnership interests in Borrower.

(b) Any time the phrase "to the best of Borrower's knowledge" or a phrase similar thereto is used herein, it means: "to the actual knowledge of the executive officers of Borrower and the REIT, after reasonable inquiry of those agents, employees or contractors of the REIT, Borrower, any Agreement Party or any Subsidiary who could reasonably be anticipated to have knowledge with respect to the subject matter or circumstances in question and review of those documents or instruments which could reasonably be anticipated to be relevant to the subject matter or circumstances in question."

(c) In each case where the consent or approval of Agent, Requisite Lenders, Supermajority Lenders or all Lenders is required or their non-obligatory action is requested by Borrower, such consent, approval or action shall be in the sole and absolute discretion of Agent and, as applicable, each Lender, unless otherwise specifically indicated.

## ARTICLE II

### LOAN

#### 2.01 Making of Loan and Repayment.

##### (a) Loan Availability.

(i) Subject to the terms and conditions set forth in this Agreement and in reliance on the representation and warranties of Borrower and the REIT set forth in this Agreement, each Lender hereby agrees to make its share of the Loan to Borrower on the Closing Date in an amount equal to such Lender's Commitment. The Loan will be evidenced by the Loan Notes.

(ii) The Loan may be voluntarily prepaid pursuant to Section 2.05(a), but Borrower may not reborrow any amounts so prepaid. The principal balance of the Loan shall be payable in full on the Termination Date.

(b) Notice of Borrowing; Continuation/Conversion. Borrower shall give Agent, at Wells Fargo Disbursement Center, 2120 East Park Place, Suite 100, El Segundo, California 90245, with a copy to Wells Fargo Bank, N.A., 225 West Wacker Drive, Suite 2550, Chicago, Illinois 60606, Attn: Account Officer, or such other address as Agent shall designate, an original or facsimile Notice of Borrowing no later than 10:00 A.M. (California time), not less than three (3) nor more than five (5) Business Days prior to the Closing Date. The Notice of Borrowing shall specify whether the Loan will be a Base Rate Loan or a LIBOR Loan and, if a LIBOR Loan, the applicable Interest Period. Any Notice of Borrowing pursuant to this Section 2.01(b) shall be irrevocable. Borrower may elect (A) so long as no Event of Default has occurred and is continuing, to convert Base Rate Loans or any portion thereof into LIBOR Loans, (B) to convert LIBOR Loans or any portion thereof into Base Rate Loans, or (C) so long as no Event of Default has occurred and is continuing, to continue any LIBOR Loans or any portion thereof for an additional Interest Period; provided, however, that the amount of the Loan being continued as or converted to LIBOR Loans shall, in the aggregate, equal One Million Dollars (\$1,000,000) or an integral multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof. The

applicable Interest Period for the continuation of any LIBOR Loan shall commence on the day on which the next preceding Interest Period expires. Each such election shall be made by giving Agent, at 2120 E. Park Place, Suite 100, El Segundo, California 90245 Attn: Jean Randall-Hall, a Notice of Continuation/Conversion by 10:00 A.M. (California time) on the date of a conversion to a Base Rate Loan, or by 10:00 A.M. (California time) not less than three (3) nor more than five (5) Business Days prior to the date of a conversion to or continuation of a LIBOR Loan, specifying, in each case (1) whether a conversion or continuation is to occur, (2) the amount of the conversion or continuation, (3) the Interest Period therefor, in the case of a conversion to or continuation of a LIBOR Loan, and (4) the date of the conversion or continuation (which date shall be a Business Day). Agent shall promptly notify each Lender, but in any event within one (1) Business Day after receipt of such notice, of its receipt of each such notice and the contents thereof. Notwithstanding anything to the contrary contained herein and subject to the default interest provisions contained in Section 2.03, if an Event of Default occurs, all LIBOR Loans will convert to Base Rate Loans upon the expiration of the applicable Interest Periods therefor or the date the Loan becomes due, whichever occurs first. Except as provided above, the conversion of a LIBOR Loan to a Base Rate Loan shall only occur on the last Business Day of the Interest Period relating to such LIBOR Loan. In the absence of an effective election by Borrower of a LIBOR Loan and Interest Period in accordance with the above procedures prior to the third (3rd) Business Day prior to the expiration of the then current Interest Period with respect to any LIBOR Loan, interest on such LIBOR Loan shall accrue at the interest rate then applicable to a LIBOR Loan for an Interest Period of thirty (30) days, effective immediately upon the expiration of the then-current Interest Period, without prejudice, however, to the right of Borrower to elect a Base Rate Loan or a different Interest Period in accordance with the terms and provisions of this Agreement; provided, however, that if such continuation shall cause the number of LIBOR Loan tranches to exceed three (3), such LIBOR Loan shall be converted to a Base Rate Loan.

(c) Making of Loan. Subject to Section 10.03, Agent shall make the proceeds of the Loan available to Borrower in El Segundo, California on the Closing Date and shall disburse such funds in Dollars and in immediately available funds not later than 1:00 P.M. Chicago time to Borrower's account, at Bank of America, Account Number 73-66901095 in Chicago, Illinois, or such other account specified in the Notice of Borrowing acceptable to Agent, with a confirming telephone call to Quantaze Watts at (312) 279-1408 or Mark Howell at (312) 279-1402.

(d) Term; Principal Payment. The outstanding balance of the Loan shall be payable in full on the earlier to occur of (A) the Maturity Date, and (B) the acceleration of the Loan pursuant to Section 9.02(a) (the "Termination Date").

2.02 Borrowing and Interest Rate Election Authorization. Borrower shall provide Agent with documentation reasonably satisfactory to Agent indicating the names of those employees or agents of Borrower authorized by Borrower to sign Notices of Borrowing and Continuation/Conversion, any extension notice and to receive callback confirmations, and Agent and Lenders shall be entitled to rely on such documentation until notified in writing by Borrower of any change(s) of the persons so authorized. Agent shall be entitled to act in good faith on the instructions of anyone identifying himself as one of the Persons so authorized, and Borrower

shall be bound thereby in the same manner as if such Person were actually so authorized. Borrower agrees to indemnify, defend and hold Lenders and Agent harmless from and against any and all Liabilities and Costs which may arise or be created by the acceptance of instructions for making the Loan.

### 2.03 Interest on the Loan.

(a) Base Rate Loans. Subject to Section 2.03(d), all Base Rate Loans shall bear interest on the average daily unpaid principal amount thereof from the date made until paid in full at a fluctuating rate per annum equal to the Base Rate.

(b) LIBOR Loans. Subject to Section 2.03(d), all LIBOR Loans shall bear interest on the unpaid principal amount thereof during the Interest Period applicable thereto at a rate per annum equal to the sum of LIBOR for such Interest Period plus the Applicable Margin. Upon receipt of a Notice of Borrowing or Notice of Continuation/Conversion requesting the making of, continuation of and/or conversion to LIBOR Loans, Agent shall determine LIBOR applicable to the Interest Period for such LIBOR Loans, and shall give notice thereof to Borrower and Lenders; provided, however, that failure to give such notice shall not affect the validity of such rate. Each determination by Agent of LIBOR shall be conclusive and binding upon the parties hereto in the absence of demonstrable error. LIBOR Loans shall be in tranches of One Million Dollars (\$1,000,000) or One Hundred Thousand Dollar (\$100,000) increments in excess thereof. No more than three (3) LIBOR Loan tranches shall be outstanding at any one time.

(c) Interest Payments. Subject to Section 2.03(d), interest accrued on the Loan shall be payable by Borrower in arrears on the first Business Day of the first calendar month following the Closing Date, and the first Business Day of each succeeding calendar month thereafter, and on the Termination Date.

(d) Default Interest. Notwithstanding the rates of interest specified in Sections 2.03(a) and 2.03(b) and the payment dates specified in Section 2.03(c), effective immediately upon demand by Agent after the occurrence of an Event of Default and during the continuance of any Event of Default, the principal balance of the Loan then outstanding and, to the extent permitted by applicable law, any interest payments on the Loan not paid when due shall bear interest payable upon demand at a rate which is five percent (5%) per annum in excess of the rate or rates of interest otherwise payable under this Agreement. All other amounts due Agent or Lenders (whether directly or for reimbursement) under this Agreement or any of the other Loan Documents if not paid when due, or if no time period is expressed, if not paid within fifteen (15) days after written demand to Borrower, shall bear interest from and after demand at the rate which is five percent (5%) per annum in excess of the lowest rate or rates of interest otherwise payable under this Agreement, or, if no portion of the Loan is then outstanding, at the rate which is five percent (5%) per annum in excess of the rate of interest applicable to Base Rate Loans.

(e) Late Fee. Borrower acknowledges that late payment to Agent will cause Agent and Lenders to incur costs not contemplated by this Agreement. Such costs include

without limitation processing and accounting charges. Therefore, if Borrower fails timely to pay any sum due and payable hereunder through the Termination Date (other than payments of principal), unless waived by Agent pursuant to Section 11.05(e), a late charge of four cents (\$.04) for each dollar of any interest payment due hereon and which is not paid within ten (10) days after such payment is due or of any other amount due hereon (other than payments of principal) and which is not paid within thirty (30) days after such payment is due, shall be charged by Agent (for the benefit of Lenders) and paid by Borrower for the purpose of defraying the expense incident to handling such delinquent payment; provided, however, that no late charges shall be assessed with respect to any amount for which Borrower is obligated to pay interest at the rate specified in Section 2.03(d), provided, further, that in no event shall Agent or Lenders be required to refund any late fees paid by Borrower, notwithstanding the preceding proviso. Borrower and Agent agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date hereof and represents a fair and reasonable estimate of the costs that Agent and Lenders will incur by reason of late payment. Borrower and Agent further agree that proof of actual damages would be costly and inconvenient. Acceptance of any late charge shall not constitute a waiver of the default with respect to the overdue installment, and shall not prevent Agent from exercising any of the other rights available hereunder or under any other Loan Document. Such late charge shall be paid without prejudice to any other rights of Agent.

(f) Computation of Interest. Interest and fees shall be computed on the basis of the actual number of days elapsed in the period during which interest or fees accrue and a year of three hundred sixty (360) days. In computing interest on the Loan, the date of the making of the Loan shall be included and the date of payment shall be excluded. Notwithstanding subsections (a), (b), (d) and (e) above, interest in respect of the Loan or any portion thereof shall not exceed the maximum rate permitted by applicable law.

(g) Changes; Legal Restrictions. In the event that after the Closing Date (A) the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a court or Governmental Authority or any change in the interpretation or application thereof by a court or Governmental Authority, or (B) compliance by Agent or any Lender with any request or directive made or issued after the Closing Date (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) from any central bank or other Governmental Authority or quasi-governmental authority:

(i) subjects Agent or any Lender to any tax, duty or other charge of any kind with respect to the Facility, this Agreement or any of the other Loan Documents or changes the basis of taxation of payments to Agent or such Lender of principal, fees, interest or any other amount payable hereunder, except for net income, gross receipts, gross profits or franchise taxes imposed by any jurisdiction and not specifically based upon loan transactions (all such non-excepted taxes, duties and other charges being hereinafter referred to as "Lender Taxes");

(ii) imposes, modifies or holds applicable, in the determination of Agent or any Lender, any reserve, special deposit, compulsory loan, FDIC insurance, capital

allocation or similar requirement against assets held by, or deposits or other liabilities in or . for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, Agent or such Lender or any applicable lending office (except to the extent that reserve and FDIC insurance requirements are reflected in the "Base Rate" or "LIBOR"; or

(iii) imposes on Agent or any Lender any other condition materially more burdensome in nature, extent or consequence than those in existence as of the Closing Date;

and the result of any of the foregoing is to (X) increase the cost to Agent or any Lender of making, renewing, maintaining or participating in any portion of the Loan or to reduce any amount receivable hereunder or thereunder or (Y) to require Agent or any Lender or any applicable lending office to make any payment calculated by reference to the amount of the portion of the Loan held or interest received by it under such portion of the Loan; then, in any such case, Borrower shall promptly pay to Agent or such Lender, as applicable, upon demand, such amount or amounts (based upon a reasonable allocation thereof by Agent or such Lender to the financing transactions contemplated by this Agreement and affected by this Section 2.03(g)) as may be necessary to compensate Agent or such Lender for any such additional cost incurred, reduced amounts received or additional payments made to the extent Agent or such Lender generally imposes such additional costs, losses and payments on other borrowers of Agent or such Lender in similar circumstances. Agent or such Lender shall deliver to Borrower and in the case of a delivery by a Lender, such Lender shall also deliver to Agent, a written statement in reasonable detail of the claimed additional costs incurred, reduced amounts received or additional payments made and the basis therefor as soon as reasonably practicable after Agent or such Lender, as applicable, obtains knowledge thereof.

(h) Certain Provisions Regarding LIBOR Loans.

(i) LIBOR Lending Unlawful. If any Lender shall determine in good faith that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender to convert any Base Rate Loan into a LIBOR Loan or maintain any Loan as a LIBOR Loan, (A) the obligations of the Lenders to convert any Base Rate Loan into a LIBOR Loan or maintain any LIBOR Loans shall, upon such determination, forthwith be suspended until such Lender shall notify Agent that the circumstances causing such suspension no longer exist, and (B) if required by law or such assertion, all LIBOR Loans shall automatically convert into Base Rate Loans.

(ii) Deposits Unavailable. If Agent shall have determined in good faith that adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBOR Loans, then, upon notice from Agent to Borrower the obligations of all Lenders to convert any Base Rate Loan into a LIBOR Loan or maintain any Loan as a LIBOR Loan shall forthwith be suspended until Agent shall notify Borrower that the circumstances causing such suspension no longer exist. Agent will give such notice



when it determines, in good faith, that such circumstances no longer exist; provided, however, that Agent shall not have any liability to any Person with respect to any delay in giving such notice.

(iii) Funding Losses. In the event any Lender shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make or maintain any portion of the Loan as a LIBOR Loan) as a result of:

(A) any continuance, conversion, repayment or prepayment of the principal amount of any LIBOR Loans for any reason whatsoever on a date other than the scheduled last day of the Interest Period applicable thereto; or

(B) any Base Rate Loans not being converted into LIBOR Loans or any LIBOR Loans not being continued as LIBOR Loans in accordance with the Notice of Continuation/Conversion therefor, other than as a result of such Lender's breach of its obligation to continue or convert such Loan in accordance with the terms hereof;

then, within fifteen (15) Business Days after Borrower's receipt of the written notice of such Lender to Borrower with a copy to Agent, Borrower shall reimburse such Lender for such loss or expense; provided, however, that each Lender will use reasonable efforts to minimize such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of demonstrable error, be conclusive and binding on the parties hereto.

(i) Withholding Tax Exemption. Each Lender that is not created or organized under the laws of the United States of America or a political subdivision thereof shall deliver to Borrower and Agent no later than the Closing Date (or, in the case of a Lender which becomes a Lender pursuant to Section 10.11, the date upon which such Lender becomes a party hereto) a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender, in a form satisfactory to Borrower and Agent, to the effect that such Lender is capable, under the provisions of an applicable treaty concluded by the United States of America (in which case the certificate shall be accompanied by three (3) accurate and complete duly executed originals of Form W-8BEN of the Internal Revenue Service) or under Section 1442 of the Internal Revenue Code (in which case the certificate shall be accompanied by three (3) accurate and complete duly executed originals of Form W-8ECI of the Internal Revenue Service), of receiving payments of principal, interest and fees hereunder without deduction or withholding of United States federal income tax. Further, if at any time a Lender changes its applicable lending office or selects an additional applicable lending office, it shall, at the same time or promptly thereafter, but only to the extent the certificate and forms previously delivered by it hereunder are no longer applicable or effective, deliver to Borrower and Agent in replacement for, or in addition to, the certificate and forms previously delivered by it hereunder, a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender accompanied by three (3) accurate and complete duly executed originals of either Form W-8BEN of the Internal Revenue Service or

Form W-8ECI of the Internal Revenue Service, whichever is applicable, indicating that such Lender is entitled to receive payments of principal, interest and fees for the account of such changed or additional applicable lending office under this Agreement without deduction or withholding of United States federal tax. Each Lender further agrees to deliver to Borrower and Agent a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender accompanied by three (3) accurate and complete duly executed originals of either Form W-8BEN of the Internal Revenue Service or Form W-8ECI of the Internal Revenue Service, whichever is appropriate, substantially in a form satisfactory to Borrower and Agent, before or promptly upon the occurrence of any event requiring a change in the most recent certificate or Internal Revenue Service form previously delivered by it to Borrower and Agent pursuant to this Section 2.03(j). Further, each Lender which delivers a certificate accompanied by Form W-8BEN of the Internal Revenue Service covenants and agrees to deliver to Borrower and Agent within fifteen (15) days prior to January 1, 2003, and every third (3rd) anniversary of such date thereafter, on which this Agreement is still in effect, another such certificate and three (3) accurate and complete original signed copies of Form W-8BEN (or any successor form or forms required under the Internal Revenue Code or the applicable regulations promulgated thereunder), and each Lender that delivers a certificate accompanied by Form W-8ECI of the Internal Revenue Service covenants and agrees to deliver to Borrower and Agent within fifteen (15) days prior to the beginning of each subsequent taxable year of such Lender during which this Agreement is still in effect, another such certificate and three (3) accurate and complete original signed copies of Internal Revenue Service Form W-8ECI (or any successor form or forms required under the Internal Revenue Code or the applicable regulations promulgated hereunder). If (i) any Lender is required under this Section 2.03(j) to provide a certificate or other evidence described above and fails to deliver to Borrower and Agent such certificate or other evidence or (ii) any Lender delivers a certificate to the effect that, as a result of the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a Governmental Authority after the date such Lender became a party hereto, such Lender is not capable of receiving payments of interest hereunder without deduction or withholding of United States federal income tax as specified therein and that it is not capable of recovering the full amount of the same from a source other than Borrower, then, to the extent required by law, as the sole consequence of such Lender's failure to deliver the certificate described in (i) above or such Lender's delivery of the certificate described in (ii) above, Borrower shall be entitled to deduct or withhold taxes from the payments owed to such Lender.

#### 2.04 Fees.

(a) Loan Fee. On the Closing Date, Borrower shall pay Agent, for the benefit of the Lenders, the loan fee which is provided for in the separate fee agreement between Agent and Borrower.

(b) Arrangement and Administrative Agency Fees. Borrower shall pay Agent such fees as are provided for in the separate fee agreement between Agent and Borrower, as in existence from time to time.

(c) Payment of Fees. The fees described in this Section 2.04 represent compensation for services rendered and to be rendered separate and apart from the lending of money or the provision of credit and do not constitute compensation for the use, detention or forbearance of money, and the obligation of Borrower to pay the fees described herein shall be in addition to, and not in lieu of, the obligation of Borrower to pay interest, other fees and expenses otherwise described in this Agreement. All fees shall be payable when due in California in immediately available funds and shall be non-refundable when paid. If Borrower fails to make any payment of fees or expenses specified or referred to in this Agreement due to Agent or Lenders, including without limitation those referred to in this Section 2.04 or otherwise under this Agreement or any separate fee agreement between Borrower and Agent relating to this Agreement, when due, the amount due shall bear interest until paid at the Base Rate and, after five (5) days at the rate specified in Section 2.03(d) (but not to exceed the maximum rate permitted by applicable law) and shall constitute part of the Obligations. All fees described in this Section 2.04 which are expressed as a per annum charge shall be calculated on the basis of the actual number of days elapsed in a three hundred sixty (360) day year.

#### 2.05 Payments.

(a) Voluntary Prepayments. Borrower may, upon not less than three (3) Business Days prior written notice, at any time and from time to time, prepay, without premium or penalty (other than as set forth in Section 2.03(h)(iii)), the Loan in whole or in part in amounts not less than One Hundred Thousand Dollars (\$100,000) or integral multiples of Twenty-Five Thousand Dollars (\$25,000) in excess of One Hundred Thousand Dollars (\$100,000). Any notice of prepayment given to Agent under this Section 2.05(a) shall specify the date of prepayment and the aggregate principal amount of the prepayment. All prepayments of principal shall be accompanied by a payment of all accrued and unpaid interest thereon.

(b) Manner and Time of Payment. All payments of principal, interest and fees hereunder payable to Agent or the Lenders shall be made without condition or reservation of right and free of set-off or counterclaim, in Dollars and by (i) wire transfer (pursuant to Agent's written wire transfer instructions) of immediately available funds, delivered to Agent not later than 11:00 A.M. (California time) on the date due; and funds received by Agent after that time and date shall be deemed to have been paid on the next succeeding Business Day or (ii) by check (pursuant to Agent's written check payment instructions) delivered to Agent, such check and the payment intended to be covered thereby to be deemed to have been paid on the date Agent receives immediately available funds therefor. All payments of principal, interest and fees hereunder shall be made by (i) wire transfer of immediately available funds to Wells Fargo Bank, N.A. (ABA number 121000248) for credit to account number 2934507203 reference MHC Operating Limited Partnership, loan number 1561ZMC with telephonic notice to Jean Randall-Hall at (310) 335-9492, or (ii) check payable to Wells Fargo Bank, N.A. and delivered to Agent at 2120 E. Park Place, Suite 100, El Segundo, California 90245, Attn: Jean Randall-Hall, or to such other bank, account or address as Agent may specify in a written notice to Borrower.

(c) Payments on Non-Business Days. Whenever any payment to be made by Borrower hereunder shall be stated to be due on a day which is not a Business Day, payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder and of any of the fees specified in Section 2.04, as the case may be.

2.06 Increased Capital. If either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) compliance by Agent or any Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) made or issued after the Closing Date affects or would affect the amount of capital required or expected to be maintained by Agent or such Lender or any corporation controlling Agent or such Lender, and Agent or such Lender determines that the amount of such capital is increased by or based upon the existence of Agent's obligations hereunder or such Lender's obligation to maintain, continue or convert to LIBOR Loans hereunder, then, upon demand by Agent or such Lender, Borrower shall immediately pay to Agent or such Lender, from time to time as specified by Agent or such Lender, additional amounts sufficient to compensate Agent or such Lender in the light of such circumstances, to the extent that Agent or such Lender reasonably determines such increase in capital to be allocable to the existence of Agent's obligations hereunder or such Lender's commitment and to the extent Agent or such Lender generally imposes such amounts on other borrowers of Agent or Lender in similar circumstances. A certificate as to such amounts in reasonable detail submitted to Borrower by Agent or such Lender shall, in the absence of manifest error, be conclusive and binding for all purposes.

2.07 Notice of Increased Costs. Each Lender agrees that, as promptly as reasonably practicable after it becomes aware of the occurrence of an event or the existence of a condition which would cause it to be affected by any of the events or conditions described in Section 2.03(g) or (h), or Section 2.06, it will notify Borrower and provide in such notice a reasonably detailed calculation of the amount due from Borrower, and provide a copy of such notice to Agent, of such event and the possible effects thereof. If Agent or the affected Lender shall fail to notify Borrower of the occurrence of any such event or the existence of any such condition within ninety (90) days following the end of the month during which such event occurred or such condition arose, then Borrower's liability for any amounts described in said Sections 2.03(g) and (h) and 2.06 incurred by Agent or such affected Lender as a result of such event or condition shall be limited to those attributable to the period occurring subsequent to the ninetieth (90th) day prior to the date upon which Agent or such affected Lender actually notified Borrower of such event or condition.

#### 2.08 Option to Replace Lenders.

(a) Lenders. If any Lender shall make any demand for payment or reimbursement pursuant to Section 2.03(g), Section 2.03(h) or Section 2.06, then, provided that (a) there does not then exist any Unmatured Event of Default or Event of Default and (b) the circumstances resulting in such demand for payment or reimbursement are not applicable to all Lenders, Borrower may terminate the Commitment of such Lender, in whole but not in part, by

(i) giving such Lender and Agent not less than three (3) Business Days prior written notice thereof, which notice shall be irrevocable and effective only upon receipt thereof by such Lender and Agent and shall specify the effective date of such termination, (ii) paying to such Lender (and there shall become due and payable) on such date the outstanding principal amount of the portion of the Loan made by such Lender, all interest thereon, and all other Obligations owed to such Lender, including, without limitation, amounts owing under Sections 2.03(g), 2.03(h)(iii), 2.04 and 2.06, if any, and (iii) pursuant to the provisions of Section 10.11, proposing the introduction of a replacement Lender reasonably satisfactory to Agent, or obtaining the agreement of one or more existing Lenders, to assume the entire amount of the Commitment of the Lender whose Commitment is being terminated, on the effective date of such termination. Upon the satisfaction of all of the foregoing conditions, such Lender which is being terminated pursuant to this Section 2.08 shall cease to be a "Lender" for purposes of this Agreement provided that Borrower shall continue to be obligated to such Lender under Sections 11.01 and 11.02 (and any other indemnifications contained herein or in any other Loan Document) with respect to or on account of unpaid, unliquidated, unknown or similar claims or liabilities accruing prior to such Lender ceasing to be a "Lender" for purposes of this Agreement.

(b) Agent. If Agent shall make any demand for payment or reimbursement pursuant to Section 2.03(g), Section 2.03(h) or Section 2.06, then, provided that (i) there does not then exist any Unmatured Event of Default or Event of Default and (ii) the circumstances resulting in such demand for payment or reimbursement are not applicable to all Lenders, Borrower may remove Agent by (x) giving the Lenders and Agent not less than thirty (30) Business Days prior written notice thereof, and (y) paying to Agent (and there shall become due and payable) on such date all other Obligations owed to Agent, including, without limitation, amounts owing under Sections 2.03(g), 2.03(h), 2.04 and 2.06, if any. Agent shall be replaced in accordance with the provisions of Section 10.09 hereof.

#### 2.09 Extension Options.

(a) First Extension Option. At the written request of Borrower made to Agent at least thirty (30) days prior to the Initial Maturity Date, the Maturity Date shall be extended to the one-year anniversary of the Initial Maturity Date (the "First Extended Maturity Date") provided that the following conditions are satisfied:

(i) no Event of Default or Unmatured Event of Default shall have occurred and be continuing as of the Initial Maturity Date;

(ii) all representations and warranties made by Borrower and the REIT contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the Initial Maturity Date except to the extent they related to a specific date;

(iii) Agent shall have received an Officer's Certificate of the REIT dated as of the Initial Maturity Date stating that the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of

the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, and that (A) such review has not disclosed the existence as of the date of such Officer's Certificate, and that the signer does not have knowledge of the existence as of the date of such Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default and (B) all representations and warranties made by such entities contained in this Agreement and the other Loan Documents are true and correct in all material respects as of the date of such Officer's Certificate except to the extent they relate to a specific date; and

(iv) on or before the Initial Maturity Date, Agent shall have received, for the benefit of the Lenders, an extension fee in the amount of three tenths of one percent (0.30%) of the amount of the Facility.

(b) Second Extension Option. At the written request of Borrower made to Agent at least thirty (30) days prior to the First Extended Maturity Date, the Maturity Date shall be further extended to the one-year anniversary of the First Extended Maturity Date (the "Second Extended Maturity Date") provided that the following conditions are satisfied:

(i) no Event of Default or Unmatured Event of Default shall have occurred and be continuing as of the First Extended Maturity Date;

(ii) all representations and warranties made by Borrower and the REIT contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the First Extended Maturity Date except to the extent they related to a specific date;

(iii) Agent shall have received an Officer's Certificate of the REIT dated as of the First Extended Maturity Date stating that the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, and that (A) such review has not disclosed the existence as of the date of such Officer's Certificate, and that the signer does not have knowledge of the existence as of the date of such Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default and (B) all representations and warranties made by such entities contained in this Agreement and the other Loan Documents are true and correct in all material respects as of the date of such Officer's Certificate except to the extent they relate to a specific date; and

(iv) on or before the First Extended Maturity Date, Agent shall have received, for the benefit of the Lenders, an extension fee in the amount of thirty-five hundredths of one percent (0.35%) of the amount of the Facility.

### ARTICLE III

#### CONDITIONS TO LOAN

3.01 Conditions to Disbursement of Loan. The obligation of Lenders to make the Loan shall be subject to satisfaction of each of the following conditions precedent on or before the Closing Date:

(a) Borrower Loan Documents. Borrower shall have executed and delivered to Agent each of the following, in form and substance reasonably acceptable to Agent and Agent's counsel:

- (i) This Agreement;
- (ii) The Loan Notes;
- (iii) A solvency certificate;
- (iv) Agent's form of Funds Transfer Agreement and signature authorization form; and
- (v) All other documents to be executed by or on behalf of Borrower as listed on the Closing Checklist.

(b) REIT Documents. The REIT shall have executed and delivered to Agent each of the following, in form and substance reasonably acceptable to Agent and Agent's counsel:

- (i) The REIT Guaranty;
- (ii) A solvency certificate;
- (iii) A Compliance Certificate confirming the matters described in Section 3.01(i); and
- (iv) All other documents to be executed by or on behalf of the REIT as listed on the Closing Checklist.

(c) Corporate and Partnership Documents. Agent shall have received the following corporate and partnership documents:

(i) With respect to Borrower: a certified copy of Borrower's limited partnership agreement; a certified copy of Borrower's Certificate of Limited Partnership;

a certificate of existence for Borrower from the State of Illinois; and a certificate of Borrower's general partner's secretary or an officer comparable thereto (a "Secretary's Certificate") with respect to Borrower pertaining to authorization, incumbency and by-laws, if any; and

(ii) With respect to the REIT: certified copies of the REIT's certificate of incorporation and by-laws; a good standing certificate of the REIT from the State of Maryland; and a Secretary's Certificate with respect to the REIT pertaining to authorization, incumbency and by-laws.

(d) Notice of Borrowing. Borrower shall have delivered to Agent a Notice of Borrowing in compliance with Section 2.01(b).

(e) Performance. Borrower, the REIT and each Agreement Party shall have performed in all material respects all agreements and covenants required by Agent to be performed by them as a condition to funding the Loan.

(f) Solvency. Each of the REIT, Borrower and each Agreement Party shall be Solvent.

(g) Material Adverse Changes. No change, as reasonably determined by Agent, shall have occurred during the period commencing on September 30, 2001 and ending on the Closing Date (the "Interim Period"), which has a Material Adverse Effect.

(h) Litigation Proceedings. There shall not have been instituted or, to the knowledge of Borrower or the REIT, threatened, during the Interim Period, any litigation or proceeding in any court or by a Governmental Authority affecting or threatening to affect Borrower, the REIT, any Subsidiary, or any Agreement Party, in which there is a reasonable possibility of an adverse decision that could, individually or in the aggregate, have a Material Adverse Effect.

(i) No Event of Default; Satisfaction of Financial Covenants. On the Closing Date and after giving effect to the disbursement of the Loan, no Event of Default or Unmatured Event of Default shall exist and all of the financial covenants contained in Articles VII and VIII shall be satisfied.

(j) Opinion of Counsel. Agent shall have received on behalf of Agent and Lenders a favorable opinion of counsel for Borrower, each Agreement Party and the REIT dated as of the Closing Date, in form and substance reasonably satisfactory to Agent and its counsel.

(k) Due Diligence. Agent shall have completed its review of all other information delivered by Borrower pursuant to this Section 3.01 and shall have completed such additional due diligence investigations as Agent deems reasonably necessary, and such review and investigations shall provide Agent with results and information which, in Agent's reasonable determination, are satisfactory to permit Agent to enter into this Agreement.



(l) Representations and Warranties. All representations and warranties made by Borrower and the REIT contained in this Agreement and the other Loan Documents shall be true and correct in all material respects.

(m) Fees. Agent shall have received for the benefit of Agent and Lenders all fees (or Borrower shall have made arrangements reasonably acceptable to Agent therefor) then due, and Borrower shall have performed all of its other obligations as set forth in the Loan Documents to make payments to Agent on or before the Closing Date and all expenses of Agent incurred prior to such Closing Date (including without limitation all reasonable attorneys' fees), shall have been paid by Borrower.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

4.01 Representations and Warranties as to Borrower. In order to induce Lenders to make the Loan, Borrower hereby represents and warrants to Lenders as follows:

(a) Organization; Partnership Powers. Borrower (i) is a limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) is duly qualified to do business as a foreign limited partnership and in good standing under the laws of each jurisdiction in which the nature of its business requires it to be so qualified, except for those jurisdictions where failure to so qualify and be in good standing would not have a Material Adverse Effect and (iii) has all requisite partnership power and authority to own, operate and encumber its property and assets and to conduct its business as presently conducted and as proposed to be conducted in connection with and following the consummation of the transactions contemplated by the Loan Documents.

(b) Authority. Borrower has the requisite partnership power and authority to execute, deliver and perform each of the Loan Documents to which it is or will be a party. The execution, delivery and performance thereof, and the consummation of the transactions contemplated thereby, have been duly approved by the general partner of Borrower, and no other partnership proceedings or authorizations on the part of Borrower or its general or limited partners are necessary to consummate such transactions. Each of the Loan Documents to which Borrower is a party has been duly executed and delivered by Borrower and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and general equitable principles.

(c) Ownership of Borrower. Schedule 4.01(c) sets forth the general partners of Borrower and their respective ownership percentages as of the date hereof. Except as set forth in the partnership agreement of Borrower, no partnership interests (or any securities, instruments, warrants, option or purchase rights, conversion or exchange rights, calls, commitments or claims of any character convertible into or exercisable for partnership interests) of Borrower are subject to issuance under any security, instrument, warrant, option or purchase rights, conversion or exchange rights, call, commitment or claim of any right, title or interest therein or thereto. To

Borrower's knowledge, all of the partnership interests in Borrower have been issued in compliance with all applicable Requirements of Law.

(d) No Conflict. The execution, delivery and performance by Borrower of the Loan Documents to which it is or will be a party, and each of the transactions contemplated thereby, do not and will not (i) conflict with or violate Borrower's limited partnership agreement or Certificate of Limited Partnership or other organizational documents, as the case may be, or the organizational documents of any Subsidiary of Borrower or (ii) conflict with, result in a breach of or constitute (with or without notice or lapse of time or both) a default under any Requirement of Law, Contractual Obligation or Court Order of or binding upon Borrower or any of its Subsidiaries, or require termination of any such Contractual Obligation, the consequences of which conflict or breach or default or termination would have a Material Adverse Effect, or result in or require the creation or imposition of any Lien whatsoever upon any Property (except as contemplated herein).

(e) Consents and Authorizations. Borrower has obtained all consents and authorizations required pursuant to its Contractual Obligations with any other Person, the failure of which to obtain would have a Material Adverse Effect, and has obtained all consents and authorizations of, and effected all notices to and filings with, any Governmental Authority necessary to allow Borrower to lawfully execute, deliver and perform its obligations under the Loan Documents to which Borrower is a party.

(f) Governmental Regulation. Borrower is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, the Investment Company Act of 1940 or any other federal or state statute or regulation such that its ability to incur indebtedness is limited or its ability to consummate the transactions contemplated by the Loan Documents is materially impaired.

(g) Prior Financials. The Consolidated and Combined Balance Sheet as of September 30, 2001, the Consolidated and Combined Statement of Operations for the Quarter Ended September 30, 2001, and the Consolidated and Combined Statement of Cash Flows for the Quarter Ended September 30, 2001, of the REIT contained in the Form 10-Q Quarterly Report of the REIT as of September 30, 2001 (the "Pre-Closing Financials") delivered to Agent prior to the date hereof were prepared in accordance with GAAP in effect on the date such Pre-Closing Financials were prepared and fairly present the assets, liabilities and financial condition of the REIT, on a consolidated basis, at such date and the results of its operations and its cash flows, on a consolidated basis, for the period then ended.

(h) Financial Statements; Projections and Forecasts. Each of the Financial Statements to be delivered to Agent pursuant to Sections 5.01(a) and (b), (i) has been, or will be, as applicable, prepared in accordance with the books and records of the REIT, on a consolidated basis, and (ii) either fairly present, or will fairly present, as applicable, the financial condition of the REIT, on a consolidated basis, at the dates thereof (and, if applicable, subject to normal year-end adjustments) and the results of its operations and cash flows, on a consolidated basis, for the period then ended. Each of the projections delivered to Agent (A) has been, or will be, as

applicable, prepared by the REIT and the REIT's financial personnel in light of the past business and performance of the REIT, on a consolidated basis and (B) represent, or will represent, as of the date thereof, the reasonable good faith estimates of such personnel.

(i) Litigation; Adverse Effects.

(i) There is no action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any Governmental Authority, pending, or to the best of Borrower's knowledge, threatened against Borrower or any of its Subsidiaries or any of their respective Properties, in which there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect; and

(ii) Neither Borrower nor any of its Subsidiaries is (A) in violation of any Requirement of Law, which violation has a Material Adverse Effect, or (B) subject to or in default with respect to any Court Order which has a Material Adverse Effect.

(j) No Material Adverse Change. Since September 30, 2001, there has occurred no event which has a Material Adverse Effect.

(k) Payment of Taxes. All tax returns and reports to be filed by Borrower or any of its Subsidiaries have been timely filed, and all taxes, assessments, fees and other governmental charges shown on such returns have been paid when due and payable, except such taxes, if any, as are reserved against in accordance with GAAP, such taxes as are being contested in good faith by appropriate proceedings or such taxes, the failure to make payment of which when due and payable will not have, in the aggregate, a Material Adverse Effect. Borrower has no knowledge of any proposed tax assessment against Borrower or any of its Subsidiaries that will have a Material Adverse Effect, which is not being actively contested in good faith by such Person.

(l) Material Adverse Agreements. Neither Borrower nor any of its Subsidiaries is a party to or subject to any Contractual Obligation or other restriction contained in its partnership agreement, certificate of partnership, by-laws, or similar governing documents which has a Material Adverse Effect.

(m) Performance. Neither Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Contractual Obligation applicable to it, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under such Contractual Obligation in each case, except where the consequences, direct or indirect, of such default or defaults, if any, will not have a Material Adverse Effect.

(n) Federal Reserve Regulations. No part of the proceeds of the Loan hereunder will be used to purchase or carry any "margin security" as defined in Regulation U or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulation U. Borrower is not engaged primarily in

the business of extending credit for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U. No part of the proceeds of the Loan will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulation X or any other regulation of the Federal Reserve Board.

(o) Disclosure. Borrower has not intentionally or knowingly withheld any material fact from Agent in regard to any matter raised in the Loan Documents. Notwithstanding the foregoing, with respect to any projections of Borrower's future performance such representations and warranties are made in good faith and to the best judgment of Borrower at the time such projections were made.

(p) Requirements of Law. To Borrower's knowledge, Borrower and each of its Subsidiaries are in compliance with all Requirements of Law (including without limitation the Securities Act and the Securities Exchange Act, and the applicable rules and regulations thereunder, state securities law and "Blue Sky" laws) applicable to them and their respective businesses, in each case, where the failure to so comply will have a Material Adverse Effect.

(q) Patents, Trademarks, Permits, Etc. Borrower and each of its Subsidiaries owns, is licensed or otherwise has the lawful right to use, or has all permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes used in or necessary for the conduct of Borrower's or such Subsidiary's business as currently conducted, the absence of which would have a Material Adverse Effect. To Borrower's knowledge, the use of such permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes by Borrower or such Subsidiary does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, have a Material Adverse Effect.

(r) Environmental Matters. To the knowledge of Borrower, except as would not have a Material Adverse Effect and except as set forth on Schedule 4.01(r), (i) the Property and operations of Borrower and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws; (ii) none of the Property or operations of Borrower or any of its Subsidiaries are subject to any Remedial Action or other Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment or from the violation of any Environmental Laws, which Remedial Action or other Liabilities and Costs would have a Material Adverse Effect; (iii) neither Borrower nor any of its Subsidiaries has filed any notice under applicable Environmental Laws reporting a Release of a Contaminant into the environment in violation of any Environmental Laws, except as the same may have been heretofore remedied; (iv) there is not now, nor to Borrower's knowledge has there ever been, on or in the Property of Borrower or any of its Subsidiaries (except in compliance in all material respects with all applicable Environmental Laws): (A) any underground storage tanks, (B) any asbestos-containing material, (C) any polychlorinated biphenyls (PCB's) used in hydraulic oils, electrical transformers or other equipment, (D) any petroleum hydrocarbons or (E) any chlorinated or halogenated solvents; and (v) neither Borrower nor any of its Subsidiaries has received any notice or claim to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment.

(s) ERISA. None of the REIT, Borrower or any Agreement Party is an "employee pension benefit plan" as defined in Section 3(2) of ERISA, an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, a "multiemployer plan" as defined in Sections 4001(a)(3) or 3(37) of ERISA or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code. Except for a prohibited transaction arising solely because of a Lender's breach of the covenant set forth in Section 11.23, none of the Obligations, any of the Loan Documents or the exercise of any of the Agent's or Lenders' rights in connection therewith constitutes a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or otherwise results in a Lender, Agent or the Lenders being deemed in violation of Sections 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or will by itself result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code. No assets of the REIT, Borrower or any Agreement Party constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code.

Each Borrower Plan is in compliance with ERISA and the applicable provisions of the Internal Revenue Code in all respects except where the failure to comply would not have a Material Adverse Effect. There are no claims (other than claims for benefits in the normal course), actions or lawsuits asserted or instituted against, and none of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates has knowledge of any threatened litigation or claims against the assets of any Borrower Plan or against any fiduciary of such Borrower Plan with respect to the operation of such Borrower Plan which could have a Material Adverse Effect. No liability to the PBGC has been, or is likely to be, incurred by Borrower, the REIT, any of the Subsidiaries or their ERISA Affiliates other than such liabilities which, in the aggregate, would not have a Material Adverse Effect. None of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates is now contributing to or has ever contributed to or been obligated to contribute to any Multiemployer Plan, no employees or former employees of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates have been covered by any Multiemployer Plan in respect of their employment by Borrower or such Subsidiary or such ERISA Affiliate. None of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates has engaged in a "prohibited transaction," as such term is defined in Section 4975 of the Internal Revenue Code or in a transaction subject to the prohibitions of Section 406 of ERISA, in connection with any Benefit Plan or Welfare Plan which would subject Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates (after giving effect to any exemption) to the tax or penalty on prohibited transactions imposed by Section 4975 of the Internal Revenue Code, Section 502 of ERISA or any other liability under ERISA which tax, penalty or other liability would have a Material Adverse Effect. None of the Benefit Plans subject to Title IV of ERISA has any material Unfunded Pension Liability as to which Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates is or may be liable, which liability would have a Material Adverse Effect.

(t) Solvency. Borrower is and will be Solvent after giving effect to the disbursements of the Loan and the payment and accrual of all fees then payable hereunder.

(u) Use of Proceeds. Borrower's use of the proceeds of the Loan are, and will continue to be, legal and proper uses (and to the extent necessary, duly authorized by Borrower's partners) and such uses are consistent with all applicable laws and statutes.

(v) Subsidiaries and Investment Affiliates. Each Subsidiary and Investment Affiliate as of the date hereof is set forth on Schedule 4.01(v). Schedule 4.01(v) sets forth the ownership of each such Subsidiary and Investment Affiliate and the material Property owned by such Person as of the date hereof.

4.02 Representations and Warranties as to the REIT. In order to induce Lenders to make the Loan, the REIT hereby represents and warrants to Lenders as follows:

(a) Organization; Corporate Powers. The REIT (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, (ii) is duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction in which the nature of its business requires it to be so qualified, except for those jurisdictions where failure to so qualify and be in good standing would not have a Material Adverse Effect, and (iii) has all requisite corporate power and authority to own, operate and encumber its property and assets and to conduct its business as presently conducted and as proposed to be conducted in connection with and following the consummation of the transactions contemplated by the Loan Documents.

(b) Authority. The REIT has the requisite corporate power and authority to execute, deliver and perform each of the Loan Documents to which it is or will be a party. The execution, delivery and performance thereof, and the consummation of the transactions contemplated thereby, have been duly approved by the Board of Directors of the REIT, and no other corporate proceedings on the part of the REIT are necessary to consummate such transactions. Each of the Loan Documents to which the REIT is a party has been duly executed and delivered by the REIT and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and general equitable principles.

(c) No Conflict. The execution, delivery and performance by the REIT of the Loan Documents to which it is a party, and each of the transactions contemplated thereby, do not and will not (i) conflict with or violate its Articles or Certificate of Incorporation or by-laws, or other organizational documents, as the case may be, or the organizational documents of Borrower or any Subsidiary, (ii) conflict with, result in a breach of or constitute (with or without notice or lapse of time or both) a default under any Requirement of Law, Contractual Obligation or Court Order of the REIT, Borrower or any Subsidiary, or require termination of any such Contractual Obligation, the consequences of which conflict or breach or default or termination will have a Material Adverse Effect, or result in or require the creation or imposition of any Lien

whatsoever upon any of its Property, or (iii) require any approval of the stockholders of the REIT.

(d) Consents and Authorizations. The REIT has obtained all consents and authorizations required pursuant to its Contractual Obligations with any other Person, the failure of which to obtain would have a Material Adverse Effect, and has obtained all consents and authorizations of, and effected all notices to and filings with, any Governmental Authority necessary to allow the REIT to lawfully execute, deliver and perform its obligations under the Loan Documents to which the REIT is a party.

(e) Governmental Regulation. The REIT is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, the Investment Company Act of 1940 or any other federal or state statute or regulation such that its ability to incur indebtedness is limited or its ability to consummate the transactions contemplated by the Loan Documents is materially impaired.

(f) Capitalization. To the REIT's knowledge, all of the capital stock of the REIT has been issued in compliance with all applicable Requirements of Law.

(g) Litigation; Adverse Effects.

(i) There is no action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any Governmental Authority, pending, or to best of the REIT's knowledge, threatened against the REIT, any of its Subsidiaries or any of their respective Properties in which there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect; and

(ii) Neither the REIT nor any of its Subsidiaries is (A) in violation of any applicable Requirement of Law, which violation has a Material Adverse Effect, or (B) subject to or in default with respect to any Court Order which has a Material Adverse Effect.

(h) Payment of Taxes. All tax returns and reports to be filed by the REIT or any of its Subsidiaries have been timely filed, and all taxes, assessments, fees and other governmental charges shown on such returns have been paid when due and payable, except such taxes, if any, as are reserved against in accordance with GAAP, such taxes as are being contested in good faith by appropriate proceedings or such taxes, the failure to make payment of which when due and payable would not have, in the aggregate, a Material Adverse Effect. The REIT has no knowledge of any proposed tax assessment against the REIT or any of its Subsidiaries that would have a Material Adverse Effect, which is not being actively contested in good faith by the REIT or such Subsidiary.

(i) Material Adverse Agreements. The REIT is not a party to or subject to any Contractual Obligation or other restriction contained in its charter, by-laws, or similar governing documents which has a Material Adverse Effect.

(j) Performance. Neither the REIT nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Contractual Obligation applicable to it, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under such Contractual Obligation in each case, except where the consequences, direct or indirect, of such default or defaults, if any, would not have a Material Adverse Effect.

(k) Securities Activities. The REIT is not engaged principally in the business of extending credit for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U).

(l) Disclosure. The REIT has not intentionally or knowingly withheld any material fact from Agent in regard to any matter raised in the Loan Documents. Notwithstanding the foregoing, with respect to any projections of the REIT's future performance such representations and warranties are made in good faith and to the best judgment of the management of the REIT at the time such projections were made.

(m) Requirements of Law. To the REIT's knowledge, the REIT and each of its Subsidiaries are in compliance with all Requirements of Law (including without limitation the Securities Act and the Securities Exchange Act, and the applicable rules and regulations thereunder, state securities law and "Blue Sky" laws) applicable to them and their respective businesses, in each case, where the failure to so comply would have a Material Adverse Effect. After giving effect to all filings made simultaneously with the Closing Date, the REIT has made all filings with and obtained all consents of the Commission required under the Securities Act and the Securities Exchange Act in connection with the execution, delivery and performance by the REIT of the Loan Documents to which it is a party.

(n) Patents, Trademarks, Permits, Etc. The REIT and each of its Subsidiaries owns, is licensed or otherwise has the lawful right to use, or has all permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes used in or necessary for the conduct of the REIT's or such Subsidiary's business as currently conducted, the absence of which would have a Material Adverse Effect. To the REIT's knowledge, the use of such permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes by the REIT or such Subsidiary does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, have a Material Adverse Effect.

(o) Environmental Matters. To the knowledge of the REIT, except as would not have a Material Adverse Effect and except as set forth on Schedule 4.01(r), (i) the Property and operations of the REIT and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws; (ii) none of the Property or operations of the REIT or any of its Subsidiaries are subject to any Remedial Action or other Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment or from the violation of any Environmental Laws, which Remedial Action or other Liabilities and Costs would have a Material Adverse Effect; (iii) neither the REIT nor any of its Subsidiaries has filed any notice



under applicable Environmental Laws reporting a Release of a Contaminant into the environment in violation of any Environmental Laws, except as the same may have been heretofore remedied; (iv) there is not now, nor to the REIT's knowledge has there ever been, on or in the Property of the REIT or any of its Subsidiaries (except in compliance in all material respects with all applicable Environmental Laws): (A) any underground storage tanks, (B) any asbestos-containing material, (C) any polychlorinated biphenyls (PCB's) used in hydraulic oils, electrical transformers or other equipment, (D) any petroleum hydrocarbons or (E) any chlorinated or halogenated solvents; and (v) neither the REIT nor any of its Subsidiaries has received any notice or claim to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment.

(p) Solvency. The REIT is and will be Solvent after giving effect to the disbursement of the Loan and the payment of all fees then payable hereunder.

(q) Status as a REIT. The REIT (i) is a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto), (ii) has not revoked its election to be a real estate investment trust, (iii) has not engaged in any "prohibited transactions" as defined in Section 856(b)(6)(iii) of the Internal Revenue Code (or any successor provision thereto), except for the transfer of manufactured home inventory from Borrower to Realty Systems, Inc., a Delaware corporation (provided that such transfer does not adversely affect the REIT's status as a real estate investment trust under the Internal Revenue Code), and (iv) for its current "tax year" (as defined in the Internal Revenue Code) is and for all prior tax years subsequent to its election to be a real estate investment trust has been entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code.

(r) Ownership. The REIT does not own any Property or have any interest in any Person other than as set forth on Schedule 4.01(v).

(s) Listing. The common stock of the REIT is and will continue to be listed for trading and traded on either the New York Stock Exchange or American Stock Exchange.

#### ARTICLE V

##### REPORTING COVENANTS

Borrower covenants and agrees that, on and after the date hereof, until payment in full of all of the Obligations and termination of this Agreement:

5.01 Financial Statements and Other Financial and Operating Information. Borrower shall maintain or cause to be maintained a system of accounting established and administered in accordance with sound business practices and consistent with past practice to permit preparation of quarterly and annual financial statements in conformity with GAAP. Borrower shall deliver or cause to be delivered to Agent with copies for each Lender:

(a) Quarterly Financial Statements Certified by CFO. As soon as practicable, and in any event within fifty (50) days after the end of each Fiscal Quarter, except the last Fiscal Quarter of a Fiscal Year, consolidated balance sheets, statements of income and expenses and statements of cash flow (collectively, "Financial Statements") for the REIT, on a consolidated basis, in the form provided to the Commission on the REIT's Form 10-Q and certified by the REIT's chief financial officer.

(b) Annual Financial Statements. Within one hundred and twenty (120) days after the close of each Fiscal Year, annual Financial Statements of the REIT, on a consolidated basis (in the form provided to the Commission on the REIT's Form 10K), audited and certified without qualification by the Accountants.

(c) Officer's Certificate of REIT. (i) Together with each delivery of any Financial Statement pursuant to Sections 5.01(a) and (b), an Officer's Certificate of the REIT, stating that (A) the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, during the accounting period covered by such Financial Statements, and that such review has not disclosed the existence during or at the end of such accounting period, and that the signer does not have knowledge of the existence as of the date of the Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action has been taken, is being taken and is proposed to be taken with respect thereto and (B) such Financial Statements have been prepared in accordance with the books and records of the REIT, on a consolidated basis, and fairly present the financial condition of the REIT, on a consolidated basis, at the date thereof (and, if applicable, subject to normal year-end adjustments) and the results of operations and cash flows, on a consolidated basis, for the period then ended; and (ii) together with each delivery pursuant to clauses (a) and (b) above, a compliance certificate demonstrating, in reasonable detail (which detail shall include actual calculations), compliance during and at the end of such accounting periods with the financial covenants contained in Sections 7.01(a), 7.01(d) and 7.02(a) and Article VIII.

(d) Knowledge of Event of Default. Promptly upon Borrower obtaining knowledge (i) of any condition or event which constitutes an Event of Default or Unmatured Event of Default, or (ii) of any condition or event which has a Material Adverse Effect, an Officer's Certificate of the REIT specifying the nature and period of existence of any such condition or event and the nature of such claimed Event of Default, Unmatured Event of Default, event or condition, and what action Borrower, the REIT or the Agreement Party, as the case may be, has taken, is taking and proposes to take with respect thereto.

(e) Litigation, Arbitration or Government Investigation. Promptly upon Borrower obtaining knowledge of (i) the institution of, or threat of, any material action, suit, proceeding, governmental investigation or arbitration against or affecting Borrower, any

Agreement Party, the REIT, any Subsidiary or any of their Property not previously disclosed in writing by Borrower to Agent pursuant to this Section 5.01(e), or (ii) any material development in any action, suit, proceeding, governmental investigation or arbitration already disclosed, in which, in either case, there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect, a notice thereof to Agent and such other information as may be reasonably available to it to enable Agent and its counsel to evaluate such matters.

(f) Failure of the REIT to Qualify as Real Estate Investment Trust. Promptly upon, and in any event within forty-eight (48) hours after Borrower first has knowledge of (i) the REIT failing to continue to qualify as a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereof), (ii) any act by the REIT causing its election to be taxed as a real estate investment trust to be terminated, (iii) any act causing the REIT to be subject to the taxes imposed by Section 857(b)(6) of the Internal Revenue Code (or any successor provision thereto), (iv) the REIT failing to be entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code or (v) any challenge by the IRS to the REIT's status as a real estate investment trust, a notice of any such occurrence or circumstance.

(g) Management Reports. Upon and after the occurrence of an Event of Default, copies of any management reports prepared by the Accountants as soon as available.

(h) Property Changes. Notice of any material acquisition, disposition, merger, or purchase by the REIT, Borrower, any Subsidiary or any Agreement Party no later than ten (10) days after the consummation thereof, specifying the nature of the transaction in reasonable detail.

(i) Other Information. Such other information, reports, contracts, schedules, lists, documents, agreements and instruments in the possession of the REIT, Borrower, any Subsidiary, or any Agreement Party with respect to the business, financial condition, operations, performance, or properties of Borrower, the REIT, any Subsidiary, or any Agreement Party, as Agent may, from time to time, reasonably request, including without limitation, annual information with respect to cash flow projections, budgets, operating statements (current year and immediately preceding year), rent rolls, lease expiration reports, leasing status reports, note payable summaries, bullet note summaries, equity funding requirements, contingent liability summaries, line of credit summaries, line of credit collateral summaries, wrap note or note receivable summaries, schedules of outstanding letters of credit, summaries of cash and Cash Equivalents, projections of management and leasing fees and overhead budgets, each in the form customarily prepared by the REIT or Borrower. If Borrower fails to provide Agent with information requested from Borrower within the time periods provided for herein, or if no time periods are provided for, within ten (10) Business Days after Agent requests such information, and provided that Agent gives Borrower reasonable prior notice and an opportunity to participate, Borrower hereby authorizes Agent to communicate with the Accountants and authorizes the Accountants to disclose to Agent any and all financial statements and other information of any kind, including copies of any management letter or the substance of any oral information, that such Accountants may have with respect to financial condition, operations, properties, performance and prospects of Borrower, the REIT, any Subsidiary, or any Agreement

Party. Concurrently therewith, Agent will notify Borrower of any such communication. At Agent's request, Borrower shall deliver a letter addressed to the Accountants instructing them to disclose such information in compliance with this Section 5.01(i).

5.02 Press Releases; SEC Filings and Financial Statements. The REIT and Borrower will deliver to the Agent as soon as practicable after public release all press releases concerning the REIT or Borrower. The REIT and Borrower will deliver to Agent as soon as practicable after filing with the Commission, all reports and notices, proxy statements, registration statements and prospectuses. All materials sent or made available generally by the REIT to the holders of its publicly-held Securities or to a trustee under any indenture or filed with the Commission, including all periodic reports required to be filed with the Commission, will be delivered to Agent as soon as available.

5.03 Environmental Notices. Except for events or occurrences that will not result in a Material Adverse Effect, Borrower shall notify Agent, in writing, as soon as practicable, and in any event within ten (10) days after Borrower's learning thereof, of any: (a) written notice or claim to the effect that Borrower, any Agreement Party, the REIT, or any Subsidiary is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant into the environment; (b) written notice that Borrower, any Agreement Party, the REIT, or any Subsidiary is subject to investigation by any Governmental Authority evaluating whether any Remedial Action is needed to respond to the Release or threatened Release of any Contaminant into the environment; (c) written notice that any Property of Borrower, any Agreement Party, the REIT, or any Subsidiary is subject to an Environmental Lien; (d) written notice of violation to Borrower, any Agreement Party, the REIT, or any Subsidiary or awareness of a condition which might reasonably result in a notice of violation of any Environmental Laws by Borrower, the REIT, any Subsidiary or any Agreement Party; (e) commencement or written threat of any judicial or administrative proceeding alleging a violation by Borrower, the REIT, any Subsidiary or any Agreement Party of any Environmental Laws; or (f) written notice received directly from a Governmental Authority of any changes to any existing Environmental Laws.

5.04 Qualifying Unencumbered Properties. Borrower may from time to time but no more frequently than quarterly deliver notice to Agent stating that Borrower intends to designate a Property to become a Qualifying Unencumbered Property. Such notice shall (i) set forth the name of such Property (or, if such Property has no name, such notice shall otherwise identify such Property), and (ii) be accompanied by a statement of income, certified by the chief financial officer of the REIT, for each such Property for the then most recently completed Fiscal Quarter (or, if such statement of income is unavailable, a pro forma financial statement setting forth the Net Operating Income with respect to such Property for the then current Fiscal Quarter). If any such Property meets the requirements set forth in the definition of "Qualifying Unencumbered Properties" and Agent fails to deliver written notice to Borrower stating that the Requisite Lenders have disapproved the designation of such Property as a Qualifying Unencumbered Property (it being understood that such notice shall provide Borrower with information regarding why such designation was disapproved by the Requisite Lenders and that the Requisite Lenders will not unreasonably disapprove such designation) within twenty (20)

days after receipt of such information by Agent, such Property shall become a Qualifying Unencumbered Property.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Borrower and the REIT covenant and agree that, on and after the date hereof, until payment in full of all of the Obligations and termination of this Agreement:

#### 6.01 With respect to Borrower:

(a) Existence. Borrower shall, and shall cause each of its Subsidiaries to, at all times maintain its and their respective partnership, limited liability company, trust or corporate existence, as applicable, and preserve and keep in full force and effect its and their respective rights and franchises unless the failure to maintain such rights and franchises does not have a Material Adverse Effect. Borrower shall maintain its status as a limited partnership.

(b) Qualification. Borrower shall, and shall cause each of its Subsidiaries to, qualify and remain qualified to do business in each jurisdiction in which the nature of its and their businesses require them to be so qualified except for those jurisdictions where failure to so qualify does not have a Material Adverse Effect.

(c) Compliance with Laws, Etc. Borrower shall, and shall cause each of its Subsidiaries to, (i) comply with all Requirements of Law and Contractual Obligations, and all restrictive covenants affecting Borrower and its Subsidiaries or their respective properties, performance, assets or operations, and (ii) obtain as needed all Permits necessary for its and their respective operations and maintain such in good standing, except in each of the foregoing cases where the failure to do so will not have a Material Adverse Effect or expose Agent or Lenders to any material liability therefor.

(d) Payment of Taxes and Claims. (a) Borrower shall, and shall cause each of its Subsidiaries to, pay (i) all taxes, assessments and other governmental charges imposed upon it or them or on any of its or their respective properties or assets or in respect of any of its or their respective franchises, business, income or property before any penalty or interest accrues thereon, the failure to make payment of which in such time periods would have a Material Adverse Effect, and (ii) all claims (including, without limitation, claims for labor, services, materials and supplies) which have become due and payable and which by law have or may become a Lien (other than a Permitted Lien) upon any of its or their respective properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, the failure to make payment of which would have a Material Adverse Effect; provided, however, that no such taxes, assessments, and governmental charges referred to in clause (i) above or claims referred to in clause (ii) above need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if adequate reserves shall have been set aside therefor in accordance with GAAP.

(e) Maintenance of Properties; Insurance. Borrower shall, and shall cause each of its Subsidiaries to, maintain in good repair, working order and condition, excepting ordinary wear and tear, all of its and their respective Property (personal and real) and will make or cause to be made all appropriate repairs, renewals and replacements thereof, in each case where the failure to so maintain, repair, renew or replace would have a Material Adverse Effect. Borrower shall, and shall cause each of its Subsidiaries to, maintain with insurance companies that have a Best Rating of "A- VII" or higher or other insurance companies reasonably acceptable to Agent that have similar financial resources and stability, which companies shall be qualified to do business in the states where such Property is located, insurance policies and programs reasonably acceptable to Agent insuring all property and assets material to the operations of Borrower and each of its Subsidiaries against loss or damage by fire, theft, burglary, pilferage and loss in transit and business interruption, together with such other hazards as is reasonably consistent with prudent industry practice, and maintain liability insurance consistent with prudent industry practice with financially sound insurance companies qualified to do business in the states where such Property is located. The insurance policies shall provide that they cannot be terminated or materially modified unless Agent receives thirty (30) days prior written notice of said termination or modification. At Agent's reasonable request, Borrower shall furnish evidence of replacement costs, without cost to Agent, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the improvements on any Property of Borrower or any of its Subsidiaries. In the event Borrower fails to cause insurance to be carried as aforesaid, Agent shall have the right (but not the obligation), with the consent of Requisite Lenders, to place and maintain insurance required to be maintained hereunder and treat the amounts expended therefor as additional Obligations, payable on demand; provided however, that Agent shall give Borrower five (5) days' prior notice of Agent's intent to place or maintain such insurance during which time Borrower shall have the opportunity to obtain such insurance. All of the insurance policies required hereunder shall be in form and substance reasonably satisfactory to Agent. Agent hereby agrees that Borrower may use blanket policies to satisfy the requirements of this Section 6.01(e), approves the issuer, form and content of all insurance policies currently carried by Borrower and agrees that such insurance satisfies the requirements of this Section 6.01(e). Furthermore, Agent agrees that it will not be unreasonable in exercising any right hereunder to require Borrower to modify, alter or supplement its insurance policies or coverage or in exercising any right it may have hereunder to approve any changes Borrower may hereafter make with respect to its insurance.

(f) Inspection of Property; Books and Records. Borrower shall permit and shall cause each of the REIT, each Subsidiary, and each Agreement Party to, upon reasonable prior notice by Agent to Borrower, permit any authorized representative(s) designated by Agent to visit and inspect any of its properties including inspection of financial and accounting records and leases, and to make copies and take extracts therefrom, all at such times during normal business hours and as often as Agent may reasonably request. In connection therewith, Borrower shall pay all reasonable expenses of the types described in Section 11.01. Borrower shall keep, and shall cause each of the REIT, each Subsidiary and each Agreement Party to keep proper books of record and account in conformity with GAAP, as modified and as otherwise required by this Agreement and applicable Requirements of Law.

(g) Maintenance of Licenses, Permits, Etc. Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect all licenses, permits, governmental approvals, franchises, patents, trademarks, trade names, copyrights, authorizations or other rights necessary for the operation of their respective businesses, except where the failure to obtain any of the foregoing would not have a Material Adverse Effect; and notify Agent in writing, promptly after learning thereof, of the suspension, cancellation, revocation or discontinuance of or of any pending or threatened action or proceeding seeking to suspend, cancel, revoke or discontinue any such material license, permit, patent, trademark, trade name, copyright, governmental approval, franchise authorization or right, except where the suspension, cancellation, revocation or discontinuance would not have a Material Adverse Effect.

(h) Conduct of Business. Except for Permitted Holdings and other Investments permitted under Section 7.01(c), Borrower shall engage only in the business of owning, operating, managing and developing manufactured home communities, whether directly or through its Subsidiaries.

(i) Use of Proceeds. Borrower shall use the proceeds of the Loan only for the purpose of refinancing indebtedness outstanding under the Prior Credit Agreement.

(j) Further Assurance. Borrower shall take and shall cause its Subsidiaries and each Agreement Party to take all such further actions and execute all such further documents and instruments as Agent may at any time reasonably determine to be necessary or advisable to (i) correct any technical defect or technical error that may be discovered in any Loan Document or in the execution, acknowledgment or recordation thereof and (ii) cause the execution, delivery and performance of the Loan Documents to be duly authorized.

#### 6.02 With respect to the REIT:

(a) Corporate Existence. The REIT shall, and shall cause each of its Subsidiaries to, at all times maintain its and their respective partnership or corporate existence, as applicable, and preserve and keep in full force and effect its and their respective rights and franchises unless the failure to maintain such rights and franchises will not have a Material Adverse Effect.

(b) Qualification, Name. The REIT shall, and shall cause each of its Subsidiaries to, qualify and remain qualified to do business in each jurisdiction in which the nature of its and their businesses requires them to be so qualified except for those jurisdictions where failure to so qualify does not have a Material Adverse Effect. The REIT will transact business solely in its or its Subsidiaries' own name.

(c) Securities Law Compliance. The REIT shall comply in all material respects with all rules and regulations of the Commission and file all reports required by the Commission relating to the REIT's publicly-held Securities.

(d) Continued Status as a REIT; Prohibited Transactions. The REIT (i) will continue to be a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto), (ii) will not revoke its election to be a real estate

investment trust, (iii) will not engage in any "prohibited transactions" as defined in Section 856(b)(6)(iii) of the Internal Revenue Code (or any successor provision thereto), and (iv) will do all acts necessary to continue to be entitled to a dividend paid deduction meeting the requirements of Section 857 of the Internal Revenue Code.

(e) NYSE or ASE Listed Company. The REIT shall cause its common stock at all times to be listed for trading and be traded on the New York Stock Exchange or American Stock Exchange.

(f) Compliance with Laws, Etc. The REIT shall, and shall cause each of its Subsidiaries to, (i) comply with all Requirements of Law and Contractual Obligations, and all restrictive covenants affecting the REIT and its Subsidiaries or their respective properties, performance, prospects, assets or operations, and (ii) obtain as needed all Permits necessary for its and their respective operations and maintain such in good standing, except in each of the foregoing cases where the failure to do so will not have a Material Adverse Effect.

(g) Payment of Taxes and Claims. Subject to Section 6.02(d), the REIT shall, and shall cause each of its Subsidiaries to, pay (i) all taxes, assessments and other governmental charges imposed upon it or them or on any of its or their respective properties or assets or in respect of any of its or their respective franchises, business, income or property before any penalty or interest accrues thereon, the failure to make payment of which would have a Material Adverse Effect, and (ii) all claims (including, without limitation, claims for labor, services, materials and supplies) which have become due and payable and which by law have or may become a Lien (other than a Permitted Lien) upon any of its or their respective properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, the failure to make payment of which would have a Material Adverse Effect; provided, however, that no such taxes, assessments, and governmental charges referred to in clause (i) above or claims referred to in clause (ii) above need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if adequate reserves shall have been set aside therefor in accordance with GAAP.

## ARTICLE VII

### NEGATIVE COVENANTS

Borrower and the REIT covenant and agree that, on and after the date hereof, until payment in full of all of the Obligations and termination of this Agreement:

7.01 With respect to Borrower:

(a) Indebtedness. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) the Obligations;



(ii) trade debt incurred in the normal course of business;

(iii) intercompany payables and receivables owing between Subsidiaries in the nature of trade debt incurred in the normal course of business; and

(iv) Indebtedness which, after giving effect thereto, may be incurred or may remain outstanding without giving rise to an Event of Default or Unmatured Event of Default under any provision of Articles VII and VIII; provided, however, that (A) Borrower shall not, and shall not permit any of its Subsidiaries to, guarantee or otherwise become or remain directly or indirectly liable with respect to the Indebtedness of any Investment Affiliate, and (B) Borrower shall not permit any Subsidiary to create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Recourse Indebtedness in excess of Ten Million Dollars (\$10,000,000) per Subsidiary at any time or Thirty Million Dollars (\$30,000,000) in the aggregate for all Subsidiaries at any time.

(b) Liens. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of its Property, except:

(i) Permitted Liens; and

(ii) Liens securing Indebtedness permitted to be incurred and remain outstanding pursuant to Section 7.01(a)(iv).

(c) Investments. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or own any Investment except:

(i) Investments in cash and Cash Equivalents;

(ii) Permitted Holdings;

(iii) Investments in Subsidiaries and Investment Affiliates owned as of the Closing Date;

(iv) Investments permitted pursuant to Section 7.01(e)(v);

(v) Controlled Ownership Interests which do not constitute Non-Manufactured Home Community Property; and

(vi) mortgage loans which do not constitute Non-Manufactured Home Community Property and which are either eliminated in the consolidation of the REIT, Borrower and the Subsidiaries or are accounted for as investments in real estate under GAAP.

(d) Distributions and Dividends. Neither Borrower nor the REIT shall declare or make any dividend or other distribution on account of partnership interests in excess of ninety-five percent (95%) of Funds From Operations in any Fiscal Year; provided, however, that if an Event of Default under Section 9.01(a) shall have occurred, neither Borrower nor the REIT shall declare or make any dividend or other distribution on account of partnership interests in excess of what is required for the REIT to maintain its status as a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(e) Restrictions on Fundamental Changes.

(i) Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any merger, consolidation, reorganization or recapitalization or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), or discontinue its business.

(ii) Borrower shall remain a limited partnership with the REIT as its sole general partner.

(iii) Borrower shall not change its Fiscal Year.

(iv) Except for Permitted Holdings and other Investments permitted under Section 7.01(c), Borrower shall not engage in any line of business other than ownership, operation, management and development of manufactured home communities and the provision of services incidental thereto and the brokerage, purchase, and sale of manufactured home units, whether directly or through its Subsidiaries and Investment Affiliates.

(v) Borrower shall not acquire by purchase or otherwise all or substantially all of the business, property or assets of, or stock or other evidence of beneficial ownership of, any Person, unless after giving effect thereto, Borrower is in pro forma compliance with this Agreement.

(f) ERISA. Neither Borrower nor the REIT shall, and neither shall permit any Subsidiary or any of their ERISA Affiliates to, do any of the following to the extent that such act or failure to act would result in the aggregate, after taking into account any other such acts or failure to act, in a Material Adverse Effect:

(i) Engage, or knowingly permit a Subsidiary or an ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code which is not exempt under Section 407 or 408 of ERISA or Section 4975(d) of the Internal Revenue Code for which a class exemption is not available or a private exemption has not been previously obtained from the DOL;

(ii) Permit to exist any accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code), whether or not waived;

(iii) Fail, or permit a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary to fail, to pay timely required contributions or annual installments due with respect to any waived funding deficiency to any Plan if such failure could result in the imposition of a Lien or otherwise would have a Material Adverse Effect;

(iv) Terminate, or permit an ERISA Affiliate of the REIT, Borrower or any Subsidiary to terminate, any Benefit Plan which would result in any liability of Borrower or a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary under Title IV of ERISA;

(v) Fail, or permit any Subsidiary or ERISA Affiliate to fail to pay any required installment under section (m) of Section 412 of the Internal Revenue Code or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment, if such failure could result in the imposition of a Lien or otherwise would have a Material Adverse Effect;

(vi) Permit to exist any Termination Event;

(vii) Make, or permit a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary to make, a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in liability to Borrower, a Subsidiary or any ERISA Affiliate of the REIT, Borrower or any Subsidiary which would have a Material Adverse Effect; or

(viii) Permit the total Unfunded Pension Liabilities (using the actuarial assumptions utilized by the PBGC) for all Benefit Plans (other than Benefit Plans which have no Unfunded Pension Liabilities) to have a Material Adverse Effect.

None of the REIT, Borrower nor any Agreement Party shall use any "assets" (within the meaning of ERISA or Section 4975 of the Internal Revenue Code, including but not limited to 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code to repay or secure the Obligations if the use of such assets may result in a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or in a Lender, Agent or the Lenders being deemed in violation of Section 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or otherwise by itself results in or will result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code. Without limitation of any other provision of this Agreement, none of the REIT, Borrower or any Agreement Party shall assign, sell, pledge, encumber, transfer, hypothecate or otherwise

dispose of their respective interests or rights (direct or indirect) in any Loan Document, or attempt to do any of the foregoing or suffer any of the foregoing, or permit any party with a direct or indirect interest or right in any Loan Document to do any of the foregoing, nor shall the REIT or Borrower assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of any of their respective rights or interests (direct or indirect) in any Agreement Party, Borrower or the REIT, as applicable, or attempt to do any of the foregoing or suffer any of the foregoing, if such action would cause the Obligations, or the exercise of any of the Agent's or Lenders' rights in connection therewith, to constitute a prohibited transaction under ERISA or the Internal Revenue Code (unless Borrower furnishes to Agent a legal opinion reasonably satisfactory to Agent that the transaction is exempt from the prohibited transaction provisions of ERISA and the Internal Revenue Code (for this purpose, Agent and the Lenders agree to supply Borrower all relevant non-confidential factual information reasonably necessary to such legal opinion and reasonably requested by Borrower)) or otherwise results in a Lender, Agent or the Lenders being deemed in violation of Sections 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or otherwise by itself would result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code.

(g) Environmental Liabilities. Borrower shall not, and shall not permit any of its Subsidiaries to, become subject to any Liabilities and Costs which would have a Material Adverse Effect arising out of or related to (i) the Release or threatened Release of any Contaminant into the environment, or any Remedial Action in response thereto, or (ii) any violation of any Environmental Laws. Notwithstanding the foregoing provision, Borrower and its Subsidiaries shall have the right to contest in good faith any claim of violation of an Environmental Law by appropriate legal proceedings and shall be entitled to postpone compliance with the obligation being contested as long as (i) no Event of Default shall have occurred and be continuing, (ii) Borrower shall have given Agent prior written notice of the commencement of such contest, (iii) noncompliance with such Environmental Law shall not subject Borrower or such Subsidiary to any criminal penalty or subject Agent to pay any civil penalty or to prosecution for a crime, and (iv) no portion of any Property material to Borrower or its condition or prospects shall be in imminent danger of being sold, forfeited or lost, by reason of such contest or the continued existence of the matter being contested.

(h) Amendment of Constituent Documents. Borrower shall not permit any amendment of its limited partnership agreement, certificate of limited partnership or by-laws, if any, which would materially and adversely affect Agent or Lenders or their respective rights and remedies under the Loan Documents.

(i) Disposal of Interests. Borrower will not directly or indirectly convey, sell, transfer, assign, pledge or otherwise encumber or dispose of any material portion of its partnership interests, stock or other ownership interests in any Subsidiary or other Person in which it has an interest unless Borrower has delivered to Agent a Compliance Certificate showing on a pro forma basis (calculated in a manner reasonably acceptable to Agent) that there

would be no breach of any of the financial covenants contained in Articles VII and VIII after giving effect to such conveyance, sale, transfer, assignment, pledge, or other encumbrance or disposition.

(j) Margin Regulations. No portion of the proceeds of any credit extended under this Agreement shall be used in any manner which might cause the extension of credit or the application of such proceeds to violate Regulation U or Regulation X or any other regulation of the Federal Reserve Board or to violate the Securities Exchange Act or the Securities Act, in each case as in effect on the Closing Date and the date of such use of proceeds.

(k) Transactions with Affiliates. Borrower shall not, and shall not permit any of its Subsidiaries to, enter into, any transaction or series of related transactions with any Affiliate of Borrower, other than transactions in the ordinary course of business which are on terms and conditions substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary in an arms-length transaction with a Person other than an Affiliate.

7.02 With respect to the REIT:

(a) Indebtedness. The REIT shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) the Obligations; and

(ii) Indebtedness which, after giving effect thereto, may be incurred or may remain outstanding without giving rise to an Event of Default or Unmatured Event of Default under any provision of Articles VII and VIII; provided, however, that (A) the REIT shall not, and shall not permit any of its Subsidiaries to, guarantee or otherwise become or remain directly or indirectly liable with respect to the Indebtedness of any Investment Affiliate, and (B) the REIT shall not permit any Subsidiary to create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Recourse Indebtedness in excess of Ten Million Dollars (\$10,000,000) per Subsidiary at any time or Thirty Million Dollars (\$30,000,000) in the aggregate for all Subsidiaries at any time.

(b) Liens. The REIT shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of its Property, except:

(i) Permitted Liens; and

(ii) Liens securing Indebtedness permitted to be incurred and remain outstanding pursuant to Section 7.02(a)(ii).

(c) Restriction on Fundamental Changes.

(i) The REIT shall not enter into any merger, consolidation, reorganization or recapitalization or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution) or discontinue its business.

(ii) The REIT shall not change its Fiscal Year.

(iii) The REIT shall not engage in any line of business other than owning partnership interests in Borrower and the interests identified on Schedule 4.01(v) as being owned by the REIT and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(iv) The REIT shall not have an Investment in any Person other than Borrower and the interests identified on Schedule 4.01(v) as being owned by the REIT and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(v) The REIT shall not acquire an interest in any Property other than Securities issued by Borrower and the interests identified on Schedule 4.01(v) and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(d) Environmental Liabilities. The REIT shall not, and shall not permit any of its Subsidiaries to, become subject to any Liabilities and Costs which would have a Material Adverse Effect arising out of or related to (i) the Release or threatened Release of any Contaminant into the environment, or any Remedial Action in response thereto, or (ii) any violation of any Environmental Laws. Notwithstanding the foregoing provision, the REIT and its Subsidiaries shall have the right to contest in good faith any claim of violation of an Environmental Law by appropriate legal proceedings and shall be entitled to postpone compliance with the obligation being contested as long as (i) no Event of Default shall have occurred and be continuing, (ii) the REIT shall have given Agent prior written notice of the commencement of such contest, (iii) noncompliance with such Environmental Law shall not subject the REIT or such Subsidiary to any criminal penalty or subject Agent to pay any civil penalty or to prosecution for a crime, and (iv) no portion of any Property material to Borrower or its condition or prospects shall be in imminent danger of being sold, forfeited or lost, by reason of such contest or the continued existence of the matter being contested.

(e) Amendment of Charter or By-Laws. The REIT shall not permit any amendment of its charter documents or by-laws, which would materially and adversely affect Agent or Lenders or their respective rights and remedies under the Loan Documents.

(f) Disposal of Partnership Interests. The REIT will not directly or indirectly convey, sell, transfer, assign, pledge or otherwise encumber or dispose of any of its partnership interests in Borrower.

(g) Maximum Ownership Interests. No Person or group of Persons (within the meaning of Section 13 or 14 of the Securities Exchange Act) (other than Samuel Zell) shall beneficially acquire ownership (within the meaning of Rule 13d-3 promulgated by the Commission under such Act), directly or indirectly, of more than fifteen percent (15%) of the Securities which have the right to elect the board of directors of the REIT under ordinary circumstances on a combined basis, after giving effect to the conversion of any Convertible Securities in the REIT and Borrower.

#### ARTICLE VIII

#### FINANCIAL COVENANTS

Borrower covenants and agrees that, on and after the date of this Agreement and until payment in full of all the Obligations, the expiration of all Commitments and the termination of this Agreement:

8.01 Total Liabilities to Gross Asset Value. Borrower shall not permit the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries to exceed 0.6:1.

8.02 Secured Debt to Gross Asset Value. Borrower shall not permit the ratio of Secured Debt to the sum of Gross Asset Values for Borrower and each of its Subsidiaries to exceed 0.5:1.

8.03 EBITDA to Interest Expense Ratio. Borrower shall not permit the ratio of EBITDA for any Fiscal Quarter to Interest Expense for such Fiscal Quarter to be less than 2.0:1.

8.04 EBITDA to Fixed Charges Ratio. Borrower shall not permit the ratio of EBITDA for any Fiscal Quarter to Fixed Charges for such Fiscal Quarter to be less than 1.75:1.

8.05 Unencumbered Net Operating Income to Unsecured Interest Expense. Borrower shall not permit the ratio of Unencumbered Net Operating Income for any Fiscal Quarter to Unsecured Interest Expense for such Fiscal Quarter to be less than 1.80:1.

8.06 Unencumbered Pool. Borrower shall not permit the ratio of (a) the sum of (i) the Unencumbered Asset Value and (ii) the fair market value of cash and Cash Equivalents owned collectively by Borrower and any Wholly-Owned Subsidiary and subject to no Lien to (b) outstanding Unsecured Debt to be less than 1.80:1.

8.07 Minimum Net Worth. Borrower will maintain a Net Worth of not less than the Minimum Net Worth.

8.08 Permitted Holdings. Borrower's primary business will be the ownership, operation, management and development of manufactured home communities and any other business activities of Borrower and its Subsidiaries will remain incidental thereto. Notwithstanding the foregoing, Borrower and its Subsidiaries may acquire, maintain or engage in

the following "Permitted Holdings" if and so long as (i) the aggregate value of such Permitted Holdings, whether held directly or indirectly by Borrower and its Subsidiaries, does not exceed, at any time, twenty percent (20%) of Gross Asset Value for Borrower as a whole and (ii) the value of each such Permitted Holding, whether held directly or indirectly by Borrower and its Subsidiaries, does not exceed, at any time, the following percentages of Borrower's Gross Asset Value:

Permitted Holdings -----	Maximum Percentage of Gross Asset Value -----
Non-Manufactured Home Community Property (other than cash or Cash Equivalents)	10%
Taxable REIT Subsidiary Interests	5%
Land	5%
Securities issued by real estate investment trusts primarily engaged in the development, ownership, operation and management of manufactured home communities	5%
Manufactured Home Community Mortgages other than mortgage indebtedness which is either eliminated in the consolidation of the REIT, Borrower and the Subsidiaries or accounted for as investments in real estate under GAAP	10%
Manufacturing Home Community Ownership Interests other than Controlled Ownership Interests	10%
Development Activity	10%

The value of the foregoing categories of Permitted Holdings shall be calculated as follows: (i) the value of any Non-Manufactured Home Community Property (other than cash or Cash Equivalents) or any Manufactured Home Community Ownership Interest (other than a Controlled Ownership Interest) shall be calculated based upon its Adjusted Asset Value; (ii) the value of any Land or any Security issued by a real estate investment trust primarily engaged in the development, ownership, operation and management of manufactured home communities shall be equal to the lesser of (A) the acquisition cost thereof or (B) the current market value thereof (such market value to be determined in a manner reasonably acceptable to Agent); (iii) the value of any Taxable REIT Subsidiary Interest shall be the acquisition or investment cost thereof; (iv) the value of any Manufactured Home Community Mortgage (other than mortgage indebtedness which is either eliminated in the consolidation of the REIT, Borrower and the



Subsidiaries or accounted for as an investment in real estate under GAAP) shall be equal to the book value thereof; (v) the value of Development Activity by Borrower or any Subsidiary shall be equal to the full budgeted cost thereof; and (vi) the value of any Development Activity by an Investment Affiliate shall be equal to the greater of (A) Borrower's pro rata share of the full budgeted cost thereof based upon its percentage of equity ownership, or (B) Borrower's pro rata share of the full budgeted cost thereof based upon Borrower's economic interest in the project (as determined by Borrower in a manner reasonably satisfactory to Agent).

8.09 Calculation. Each of the foregoing ratios and financial requirements shall be calculated as of the last day of each Fiscal Quarter, but shall be satisfied at all times.

## ARTICLE IX

### EVENTS OF DEFAULT; RIGHTS AND REMEDIES

9.01 Events of Default. Each of the following occurrences shall constitute an Event of Default under this Agreement:

(a) Failure to Make Payments When Due. (i) The failure to pay in full any amount due on the Termination Date; (ii) the failure to pay in full any principal when due; (iii) the failure to pay in full any interest owing hereunder or under any of the other Loan Documents within ten (10) days after the due date thereof and, unless Agent has previously delivered two (2) or more notices of payment default to Borrower during the term of this Agreement (in which event the following notice shall not be required), Agent shall have given Borrower written notice that Agent has not received such payment on or before the date such payment was required to be made and Borrower shall have failed to make such payment within five (5) days after receipt of such notice; or (iv) the failure to pay in full any other payment required hereunder or under any of the other Loan Documents, whether such payment is required to be made to Agent or to some other Person, within ten (10) days after Agent gives Borrower written notice that such payment is due and unpaid.

(b) Dividends. Borrower or the REIT shall breach the covenant set forth in Section 7.01(d).

(c) Breach of Financial Covenants. Borrower shall fail to satisfy any covenant set forth in Article VIII and such failure shall continue for forty (40) days after Borrower's knowledge thereof.

(d) Other Defaults. Borrower, the REIT or any Agreement Party shall fail duly and punctually to perform or observe any agreement, covenant or obligation binding on Borrower, the REIT or any Agreement Party under this Agreement or under any of the other Loan Documents (other than as described in Section 6.01(e) or Sections 9.01(a), (b), (c), (e), (g) or (p)), and such failure shall continue for thirty (30) days after written notice from Agent to Borrower, the REIT or any Agreement Party (or (i) such lesser period of time as is mandated by applicable Requirements of Law or (ii) such longer period of time (but in no case more than ninety (90) days) as is reasonably required to cure such failure if Borrower, the REIT, or such

Agreement Party commences such cure within such thirty (30) days and diligently pursues the completion thereof).

(e) Breach of Representation or Warranty. Any representation or warranty made or deemed made by Borrower, the REIT or any Agreement Party to Agent or any Lender herein or in any of the other Loan Documents or in any statement, certificate or financial statements at any time given by Borrower pursuant to any of the Loan Documents shall be false or misleading in any material respect on the date as of which made and, with respect to such representations or warranties not known by Borrower at the time made or deemed made to be false or misleading, the defect causing such representation or warranty to be false or misleading is not removed within thirty (30) days after the written notice thereof from Agent to Borrower.

(f) Default as to Other Indebtedness. Borrower, the REIT, any Subsidiary or any Investment Affiliate shall have defaulted under any Other Indebtedness of such party (other than Non-Recourse Indebtedness) and as a result thereof the holders of such Other Indebtedness shall have accelerated such Other Indebtedness (other than Non-Recourse Indebtedness), if the aggregate amount of such accelerated Other Indebtedness (to the extent of any recourse to Borrower, the REIT or any Subsidiary), together with the aggregate amount of any Other Indebtedness (other than Non-Recourse Indebtedness) of Borrower, the REIT, any Subsidiary or any Investment Affiliate which has theretofore been accelerated (to the extent of any recourse to Borrower, the REIT or any Subsidiary) is \$10,000,000 or more.

(g) Involuntary Bankruptcy; Appointment of Receiver, etc.

(i) An involuntary case or other proceeding shall be commenced against the REIT, Borrower, any Subsidiary, or any Agreement Party and the petition shall not be dismissed within sixty (60) days after commencement of the case, or a court having jurisdiction shall enter a decree or order for relief in respect of the REIT, Borrower, any Subsidiary, or any Agreement Party, as the case may be, in an involuntary case or other proceeding, under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or any other similar relief shall be granted under any applicable federal, state or foreign law; or

(ii) A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, the REIT, any Subsidiary, or any Agreement Party, or over all or a substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be entered, or an interim receiver, trustee or other custodian of the REIT, Borrower, any Subsidiary, or any Agreement Party, or of all or a substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be appointed or a warrant of attachment, execution or similar process against any substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be issued and any such event shall not be stayed, vacated, dismissed, bonded or discharged within sixty (60) days of entry, appointment or issuance.

(h) Voluntary Bankruptcy; Appointment of Receiver, etc. The REIT, Borrower, any Subsidiary, or any Agreement Party shall have an order for relief entered with respect to it or commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking of possession by a receiver, trustee or other custodian for all or a substantial part of its property; the REIT, Borrower, any Subsidiary, or any Agreement Party shall make any assignment for the benefit of creditors or shall be unable or fail, or admit in writing its inability, to pay its debts as such debts become due; or the general partner(s) or Board of Directors (or any committee thereof), as applicable, of the REIT, Borrower, any Subsidiary, or any Agreement Party adopts any resolution or otherwise authorizes any action to approve any of the foregoing.

(i) Judgments and Attachments. (i) Any money judgments (other than a money judgment covered by insurance but only if the insurer has admitted liability with respect to such money judgment), writs or warrants of attachment, or similar processes involving an aggregate amount in excess of \$5,000,000 shall be entered or filed against the REIT, Borrower, any Subsidiary, or any Agreement Party or their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days, or (ii) any judgment or order of any court or administrative agency awarding material damages shall be entered against the REIT, Borrower, any Subsidiary, or any Agreement Party in any action under the Federal securities laws seeking rescission of the purchase or sale of, or for damages arising from the purchase or sale of, any Securities, such judgment or order shall have become final after exhaustion of all available appellate remedies and such judgment or order would have a Material Adverse Effect.

(j) Dissolution. Any order, judgment or decree shall be entered against the REIT, Borrower, or any Agreement Party decreeing its involuntary dissolution or split up and such order shall remain undischarged and unstayed for a period in excess of thirty (30) days; or the REIT, Borrower, or any Agreement Party shall otherwise dissolve or cease to exist.

(k) Loan Documents. Any Loan Document shall cease to be in full force and effect for any reason or any guarantor under any guaranty of all or any portion of the Obligations shall at any time disavow or deny liability under such guaranty in writing.

(l) ERISA Plan Assets. Any assets of Borrower, the REIT or any Agreement Party shall constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code or Borrower, the REIT or any Agreement Party shall be an "employee benefit plan" as defined in Section 3(3) of ERISA, a "multiemployer plan" as defined in Sections 4001(a)(3) or 3(37) of ERISA, or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code.

(m) ERISA Prohibited Transaction. The Obligations, any of the Loan Documents or the exercise of any of the Agent's or Lenders' rights in connection therewith shall constitute a prohibited transaction under ERISA and/or the Internal Revenue Code (which is not

exempt from the restrictions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA).

(n) ERISA Liabilities. (i) Any Termination Event occurs which will or is reasonably likely to subject Borrower, the REIT, any Subsidiary, any Agreement Party, any ERISA Affiliate thereof or any of them to a liability which Agent reasonably determines will have a Material Adverse Effect; (ii) the plan administrator of any Benefit Plan applies for approval under Section 412(d) of the Internal Revenue Code for a waiver of the minimum funding standards of Section 412(a) of the Internal Revenue Code and Agent reasonably determines that the business hardship upon which the Section 412(d) waiver request was based will or would reasonably be anticipated to subject Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to a liability which Agent reasonably determines will have a Material Adverse Effect; (iii) any Benefit Plan shall incur an "accumulated funding deficiency" (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA) for which a waiver shall not have been obtained in accordance with the applicable provisions of the Internal Revenue Code or ERISA which "accumulated funding deficiency" will or would reasonably be anticipated to subject Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to a liability which Agent reasonably determines will have a Material Adverse Effect; (iv) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them shall have engaged in a transaction which is prohibited under Section 4975 of the Internal Revenue Code or Section 406 of ERISA which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which Agent reasonably determines will have a Material Adverse Effect; (v) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them shall fail to pay when due an amount which it shall have become liable to pay to the PBGC, a Plan or a trust established under Title IV of ERISA which failure will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which Agent reasonably determines will have a Material Adverse Effect; (vi) a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that a Benefit Plan must be terminated or have a trustee appointed to administer such Plan which condition will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which Agent reasonably determines will have a Material Adverse Effect; (vii) a Lien shall be imposed on any assets of Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them in favor of the PBGC or a Plan which Agent reasonably determines will have a Material Adverse Effect; (viii) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate

thereof or any of them shall suffer a partial or complete withdrawal from a Multiemployer Plan or shall be in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan resulting from a complete or partial withdrawal (as described in Section 4203 or 4205 of ERISA) from such Multiemployer Plan which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which Agent reasonably determines will have a Material Adverse Effect; or (ix) a proceeding shall be instituted by a fiduciary of any Multiemployer Plan against Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to enforce Section 515 of ERISA which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which Agent reasonably determines will have a Material Adverse Effect.

(o) Solvency. Borrower, any Agreement Party or the REIT shall cease to be Solvent.

(p) Board of Directors. During any 12-month period, individuals who were directors of the REIT on the first day of such period shall not constitute a majority of the board of directors of the REIT.

(q) Revolving Credit Agreement. An "Event of Default" shall have occurred under the Revolving Credit Agreement.

An Event of Default shall be deemed "continuing" until cured or waived in writing in accordance with Section 11.05.

#### 9.02 Rights and Remedies.

(a) Acceleration. Upon the occurrence of any Event of Default with respect to Borrower described in the foregoing Section 9.01(g) or 9.01(h), the unpaid principal amount of and any and all accrued interest on the Loan and all of the other Obligations shall automatically become immediately due and payable, with all additional interest from time to time accrued thereon and without presentment, demand or protest or other requirements of any kind (including without limitation diligence, presentment, notice of intent to demand or accelerate or notice of acceleration), all of which are hereby expressly waived by Borrower, and the obligations of Lenders to make, continue or convert any Loan hereunder shall thereupon terminate; and upon the occurrence and during the continuance of any other Event of Default, Agent shall, at the request of, or may, with the consent of, Requisite Lenders, by written notice to Borrower, declare the unpaid principal amount of and any and all accrued and unpaid interest on the Loan and all of the other Obligations to be, and the same shall thereupon be, immediately due and payable with all additional interest from time to time accrued thereon and without presentment, demand, or protest or other requirements of any kind (including without limitation diligence, presentment, notice of intent to demand or accelerate and of acceleration), all of which are hereby expressly waived by Borrower. Upon the occurrence of and during the continuance of an Event of Default, no Agreement Party shall be permitted to make any distributions or dividends without the prior written consent of Agent. Upon the occurrence of an Event of Default or an acceleration of the Obligations, Agent and Lenders may exercise all or any portion of the rights and remedies set forth in the Loan Documents.

(b) Access to Information. Notwithstanding anything to the contrary contained in the Loan Documents, upon the occurrence of and during the continuance of an Event of Default,

Agent shall be entitled to request and receive, by or through Borrower or appropriate legal process, any and all information concerning the REIT, Borrower, any Subsidiary of Borrower, any Investment Affiliate, any Agreement Party, or any property of any of them, which is reasonably available to or obtainable by Borrower.

(c) Waiver of Demand. Demand, presentment, protest and notice of nonpayment are hereby waived by Borrower.

(d) Waivers, Amendments and Remedies. No delay or omission of Agent or Lenders to exercise any right under any Loan Document shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein, and any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in a writing signed by Agent after obtaining written approval thereof or the signature thereon of those Lenders required to approve such waiver, amendment or other variation, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to Agent and Lenders until the Obligations have been paid in full, the Commitments have expired or terminated and this Agreement has been terminated.

9.03 Rescission. If at any time after acceleration of the maturity of the Loan, Borrower shall pay all arrears of interest and all payments on account of principal of the Loan which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Unmatured Events of Default (other than nonpayment of principal of and accrued interest on the Loan due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 11.05, then by written notice to Borrower, Requisite Lenders may elect, in the sole discretion of Requisite Lenders to rescind and annul the acceleration and its consequences; but such action shall not affect any subsequent Event of Default or Unmatured Event of Default or impair any right or remedy in connection therewith. The provisions of the preceding sentence are intended merely to bind Lenders to a decision which may be made at the election of Requisite Lenders; they are not intended to benefit Borrower and do not give Borrower the right to require Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

## ARTICLE X

### AGENCY PROVISIONS

#### 10.01 Appointment.

(a) Each Lender hereby designates and appoints Wells Fargo as Agent of such Lender under this Agreement and the Loan Documents, and each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Loan Documents and to exercise such powers as are set forth herein or therein, together with

such other powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Article X.

(b) The provisions of this Article X are solely for the benefit of Agent and Lenders, and Borrower shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as Agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower.

10.02 Nature of Duties. Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement or in the Loan Documents. The duties of Agent shall be administrative in nature. Subject to the provisions of Sections 10.05 and 10.07, Agent shall administer the Loan in the same manner as it administers its own loans. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Loan Documents, expressed or implied, is intended or shall be construed to impose upon Agent any obligation in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the REIT, Borrower, the Subsidiaries, the Investment Affiliates, and each Agreement Party in connection with the making and the continuance of the Loan hereunder and shall make its own assessment of the creditworthiness of the REIT, Borrower, the Subsidiaries, the Investment Affiliates, and each Agreement Party, and, except as specifically provided herein, Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the Closing Date or at any time or times thereafter.

#### 10.03 Loan Continuation/Conversion.

(a) Promptly after receipt of a Notice of Continuation/Conversion, but in no event later than two (2) Business Days prior to the proposed Continuation/Conversion Date for the continuation of a LIBOR Loan or the conversion of a Base Rate Loan into a LIBOR Loan, Agent shall notify, by telecopy, each Lender of the proposed continuation or conversion and the Continuation/Conversion Date set forth therein. Each Lender shall make available to Agent (or the funding bank or entity designated by Agent), the amount of such Lender's Pro Rata Share of the Loan in immediately available funds not later than the time designated in Section 10.03(b). Unless Agent shall have been notified by any Lender prior to such time for funding in respect of the Loan that such Lender does not intend to make available to Agent such Lender's Pro Rata Share of the Loan, Agent may assume that such Lender has made such amount available to Agent and Agent, in its sole discretion, may, but shall not be obligated to, make available to Borrower a corresponding amount. If such corresponding amount is not in fact made available to Agent by such Lender on or prior to the Closing Date, such Lender agrees to pay to Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is paid or repaid to Agent, at the Federal Funds Rate. If such Lender shall pay to Agent such corresponding amount, such amount so paid shall constitute such Lender's Pro Rata Share of the

Loan. If such Lender shall not pay to Agent such corresponding amount after reasonable attempts are made by Agent to collect such amounts from such Lender, Borrower agrees to repay to Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to Agent, at the interest rate applicable thereto.

(b) Each Lender shall make the amount of its Pro Rata Share of the Loan available to Agent in Dollars and in immediately available funds, to such bank and account, in El Segundo, California as Agent may designate, not later than 9:00 A.M. (California time) on the Closing Date. Nothing in this Section 10.03(b) shall be deemed to relieve any Lender of its obligation hereunder to deliver its Pro Rata Share of the Loan on the Closing Date, nor shall any Lender be responsible for the failure of any other Lender to perform its obligations to deliver its Pro Rata Share of the Loan hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to deliver its Pro Rata Share of the Loan as required by this Section 10.03.

10.04 Distribution and Apportionment of Payments. Payments actually received by Agent for the account of Lenders shall be paid to them promptly after receipt thereof by Agent, but in any event prior to 3:00 P.M. (California time) on the day of receipt (if received by 11:00 A.M. (California time) on such day), or within one (1) Business Day thereafter (if received after 11:00 A.M. (California time) on the day of receipt), provided that Agent shall pay to such Lenders interest thereon at the Federal Funds Rate from the Business Day on which such funds are required to be paid to Lenders by Agent until such funds are actually paid in immediately available funds to such Lenders. All payments of principal and interest in respect of the outstanding Loan, all payments of the fees described in this Agreement (other than agency and arrangement fees described in Section 2.04(b)), and all payments in respect of any other Obligations shall be allocated among such of Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein. Agent shall promptly, but in any event within two (2) Business Days (with interest thereon, if required pursuant to this Section 11.04(a)), distribute to each Lender at its primary address set forth on the appropriate counterpart signature page hereof or on the Assignment and Assumption, or at such other address as a Lender may request in writing, such funds as it may be entitled to receive, provided that Agent shall in any event not be bound to inquire into or determine the validity, scope or priority of any interest or entitlement of any Lender and may suspend all payments and seek appropriate relief (including without limitation instructions from Requisite Lenders, or all Lenders, as applicable, or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby. The order of priority herein is set forth solely to determine the rights and priorities of Lenders as among themselves and may at any time or from time to time be changed by Lenders as they may elect, in writing in accordance with Section 11.05, without necessity of notice to or consent of or approval by Borrower or any other Person.

10.05 Rights, Exculpation, Etc. Neither Agent, any Affiliate of Agent, nor any of their respective officers, directors, employees, agents, attorneys or consultants, shall be liable to any Lender for any action taken or omitted by them hereunder or under any of the Loan



Documents, or in connection herewith or therewith, except that Agent shall be liable for its gross negligence or willful misconduct in the performance of its express obligations hereunder. In the absence of gross negligence or willful misconduct, Agent shall not be liable for any apportionment or distribution of payments made by it in good faith pursuant to Section 10.04. Agent shall not be responsible to any Lender for any recitals, statements, representations or warranties herein or for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement, or any of the other Loan Documents, or any of the transactions contemplated hereby and thereby; or for the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party. Agent shall not be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the Loan Documents or the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party, or the existence or possible existence of any Unmatured Event of Default or Event of Default. Agent may at any time request instructions from Lenders with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Agent is permitted or required to take or to grant without instructions from any Lenders, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Requisite Lenders or Supermajority Lenders, as the case may be. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders, Supermajority Lenders or, where applicable, all Lenders. Agent shall promptly notify each Lender at any time that the Requisite Lenders or Supermajority Lenders, as the case may be, have instructed Agent to act or refrain from acting pursuant hereto.

10.06 Reliance. Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents, telecopies or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the Loan Documents and its duties hereunder or thereunder, upon advice of legal counsel (including counsel for Borrower), independent public accountant and other experts selected by it.

10.07 Indemnification. To the extent that Agent is not reimbursed and indemnified by Borrower, Lenders will reimburse, within ten (10) days after notice from Agent, and indemnify Agent for and against any and all Liabilities and Costs which may be imposed on, incurred by, or asserted against Agent (in its capacity as Agent) in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by Agent (in its capacity as Agent) under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, provided that no Lender shall be liable for any portion of such Liabilities and Costs resulting from Agent's gross negligence or willful misconduct, bad faith or fraud. The obligations of Lenders under this Section 10.07 shall survive the payment in full of all Obligations and the termination of this Agreement. In the event that after payment and distribution of any amount by Agent to Lenders, any Lender or third party,

including Borrower, any creditor of Borrower or a trustee in bankruptcy, recovers from Agent any amount found to have been wrongfully paid to Agent or disbursed by Agent to Lenders, then Lenders, in proportion to their respective Pro Rata Shares, shall reimburse Agent for all such amounts. Notwithstanding the foregoing, Agent shall not be obligated to advance Liabilities and Costs and may require the deposit by each Lender of its Pro Rata Share of any material Liabilities and Costs anticipated by Agent before they are incurred or made payable.

10.08 Agent Individually. With respect to its Pro Rata Share of the Commitments hereunder and its Pro Rata share of the Loan, Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms "Lenders", "Requisite Lenders", "Supermajority Lenders", or any similar terms may include Agent in its individual capacity as a Lender, one of the Requisite Lenders or one of the Supermajority Lenders, but Requisite Lenders and Supermajority Lenders shall not include Agent solely in its capacity as Agent. Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with Borrower or any of its Subsidiaries or Affiliates as if it were not acting as Agent pursuant hereto.

10.09 Successor Agent; Resignation of Agent; Removal of Agent.

(a) Agent may resign from the performance of all its functions and duties hereunder at any time by giving at least thirty (30) Business Days prior written notice to Lenders and Borrower. For good cause, by a determination of all the Lenders (excluding for such determination Agent in its capacity as a Lender), Agent may be removed at any time by giving at least thirty (30) Business Days prior written notice to Agent and Borrower. Such resignation or removal shall take effect upon the acceptance by a successor Agent of appointment pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation by or removal of Agent, Requisite Lenders shall appoint a successor Agent with the consent of Borrower, which shall not be unreasonably withheld or delayed (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default). Any successor Agent must be a bank (i) the senior debt obligations of which (or such Bank's parent's senior debt obligations) are rated not less than Baa-1 by Moody's or a comparable rating by a rating agency acceptable to Requisite Lenders, (ii) which has total assets in excess of Ten Billion Dollars (\$10,000,000,000) and (iii) which is a Lender as of the date of such succession holding a Commitment without participants equal to at least ten percent (10%) of the Facility. Agent hereby agrees to remit to any successor Agent, a pro rata portion of any annual agent's fee received by Agent, in advance, for the one-year period covered by such agent's fee based upon the portion of such year then remaining.

(c) If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring or removed Agent, with the consent of Borrower, which may not be unreasonably withheld or delayed (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), shall then

appoint a successor Agent who shall meet the requirements described in subsection (b) above and who shall serve as Agent until such time, if any, as Requisite Lenders, with the consent of Borrower, which may not be unreasonably withheld or delayed (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), appoint a successor Agent as provided above.

#### 10.10 Consents and Approvals.

(a) Each Lender authorizes and directs Agent to enter into the Loan Documents other than this Agreement for the benefit of Lenders. Each Lender agrees that any action taken by Agent at the direction or with the consent of Requisite Lenders or the Supermajority Lenders and any action taken by Agent not requiring consent by Requisite Lenders, Supermajority Lenders, or all Lenders in accordance with the provisions of this Agreement or any Loan Document, and the exercise by Agent at the direction or with the consent of Requisite Lenders or the Supermajority Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders, except for actions specifically requiring the approval of all Lenders. All communications from Agent to Lenders requesting Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter or item as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if reasonably requested by a Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to Agent by Borrower in respect of the matter or issue to be resolved, and (iv) shall include Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within fifteen (15) Business Days after receipt of the request therefor from Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Agent that it objects to the recommendation or determination of Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of Requisite Lenders, Supermajority Lenders or all Lenders, Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination recommended to Lenders by Agent or such other course of action recommended by Requisite Lenders or Supermajority Lenders, as the case may be, and each non-responding Lender shall be deemed to have concurred with such recommended course of action. The following amendments, modifications or waivers shall require the consent of the Requisite Lenders:

(i) Waiver of Sections 7.01(h) or 7.02(e);

(ii) Acceleration following an Event of Default pursuant to Section 9.02(a) (except for any Event of Default pursuant to Sections 9.01(g) or 9.01(h)) or rescission of such acceleration pursuant to Section 9.03;

(iii) Approval of the exercise of remedies requiring the consent of the Requisite Lenders under Section 9.02(a);

(iv) Appointment of a successor Agent in accordance with Sections 10.09(b) and (c); or

(v) Disapproval of any Property as a Qualifying Unencumbered Property.

(b) Except for amendments, modifications and waivers requiring the consent of all Lenders pursuant to Section 11.05(b) hereof, the consent of the Supermajority Lenders shall be required to amend or modify Sections 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07 or 9.01(a) or to waive any requirement thereof or to amend or modify this Section 10.10(b).

(c) In addition to the required consents or approvals referred to in Section 11.05, Agent may at any time request instructions from Requisite Lenders with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Agent is permitted or required to take or to grant without instructions from any Lenders, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Requisite Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement, any of the other Loan Documents in accordance with the instructions of Requisite Lenders or, where applicable, Supermajority Lenders or all Lenders. Agent shall promptly notify each Lender at any time that the Requisite Lenders or Supermajority Lenders have instructed Agent to act or refrain from acting pursuant hereto.

#### 10.11 Assignments and Participations.

(a) Subject to the provisions of Section 10.11(j), after first obtaining the approval of Agent and Borrower, which approval will not be unreasonably withheld (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), each Lender may assign to one or more banks, finance companies, insurance or other institutions all or a portion of its rights and obligations under this Agreement in accordance with the provisions of this Section (including without limitation all or a portion of its Commitment and the portion of the Loan owing to it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of the assigning Lender's rights and obligations under this Agreement and the assignment shall cover the same percentage of such Lender's Commitment and the portion of the Loan owing to it, (ii) unless Agent and Borrower otherwise consent (which consent of Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), the aggregate amount of the Commitment of the assigning Lender being assigned to a Person that is not already a Lender hereunder (provided such Lender was also a Lender on the Closing Date) pursuant to each such assignment shall in no event be less than Five Million Dollars (\$5,000,000) and shall be an integral multiple of One Million

Dollars (\$1,000,000), (iii) the parties to each such assignment shall execute and deliver to Agent, for its approval and acceptance, an Assignment and Assumption and (iv) Agent shall receive from the assignor or assignors for its sole account a processing fee of Three Thousand Dollars (\$3,000). Upon such execution, delivery, approval and acceptance, and upon the effective date specified in the applicable Assignment and Assumption, (A) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been validly and effectively assigned to it pursuant to such Assignment and Assumption, have the rights and obligations of a Lender hereunder and (B) the Lender-assignor thereunder shall, to the extent that rights and obligations hereunder have been validly and effectively assigned by it pursuant to such Assignment and Assumption, relinquish its rights and be released from its obligations under this Agreement.

(b) By executing and delivering an Assignment and Assumption, the Lender-assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Assumption, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party or the performance or observance by the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party of any of their respective obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Article V or delivered pursuant to Article V to the date of such assignment and such other Loan Documents and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (iv) such assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee appoints and authorizes Agent to take such action as Agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) Agent shall maintain at its address referred to on the counterpart signature pages hereof a copy of each Assignment and Assumption delivered to and accepted by it and shall record the names and addresses of each Lender and the Commitment of, and principal amount of the Loan owing to, such Lender from time to time. Borrower, Agent and Lenders may treat each Person whose name is so recorded as a Lender hereunder for all purposes of this Agreement.

(d) Upon its receipt of an Assignment and Assumption executed by an assigning Lender and an assignee, Agent shall, if such Assignment and Assumption has been properly completed and is in substantially the form of Exhibit A, (i) accept such Assignment and Assumption, (ii) record the information contained therein and (iii) give prompt notice thereof to Borrower. Upon request, Borrower will execute and deliver to Agent an appropriate replacement promissory note or replacement promissory notes in favor of each assignee (and assignor, if such assignor is retaining a portion of its Commitment and the Loan) reflecting such assignee's (and assignor's) Pro Rata Share(s) of the Facility. Upon execution and delivery of such replacement promissory notes, the original promissory note or notes evidencing all or a portion of the Commitment and the Loan being assigned shall be canceled and returned to Borrower.

(e) Each Lender may sell participations to one or more banks, finance companies, insurance or other entities in or to all or a portion of its rights and obligations under this Agreement (including without limitation all or a portion of its Commitment and the portion of the Loan owing to it); provided, however, that (i) such Lender's obligations under this Agreement (including without limitation its Commitment to Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrower, Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement and (iv) the holder of any such participation shall not be entitled to voting rights under this Agreement except that such Participant may have the contractual right in the applicable participation agreement to prevent (A) increases in the Facility, (B) extensions of the Maturity Date (except pursuant to Section 2.09 hereof), (C) decreases in the interest rates described in this Agreement, and (D) a release of the REIT Guaranty.

(f) Borrower will use reasonable efforts to cooperate with Agent and Lenders in connection with the assignment of interests under this Agreement or the sale of participations herein.

(g) Anything in this Agreement to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Agreement, including Section 10.11, any Lender may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from its obligations thereunder. To facilitate any such pledge or assignment, Agent shall, at the request of such Lender, enter into a letter agreement with the Federal Reserve Bank in, or substantially in, the form of the exhibit to Appendix C to the Federal Reserve Bank of New York Operating Circular No 12.

(h) Anything in this Agreement to the contrary notwithstanding, any Lender may assign all or any portion of its rights and obligations under this Agreement to a Lender Affiliate of such Lender without first obtaining the approval of Agent and Borrower, provided that (i) such Lender gives Agent and Borrower at least fifteen (15) days prior written notice of any such assignment, (ii) the parties to each such assignment execute and deliver to Agent an Assignment

and Assumption, and (iii) Agent receives from assignor for its sole account a processing fee of Three Thousand Dollars (\$3,000).

(i) No Lender shall be permitted to assign, or sell a participation interest in, all or any portion of its rights and obligations under this Agreement to Borrower or any Affiliate of Borrower.

(j) Anything in this Agreement to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, no Lender shall be permitted to enter into an assignment of its rights and obligations hereunder which would result in such Lender holding a Commitment of less than Ten Million Dollars (\$10,000,000). In the event Agent ceases to hold a Commitment of less than ten percent (10%) of the Facility, Agent shall resign from the performance of all of its functions and duties hereunder; provided, however, that no such resignation shall be required during the continuance of an Event of Default.

10.12 Ratable Sharing. Subject to Sections 10.03 and 10.04, Lenders agree among themselves that (i) with respect to all amounts received by them which are applicable to the payment of the Obligations, equitable adjustment will be made so that, in effect, all such amounts will be shared among them ratably in accordance with their Pro Rata Shares, whether received by voluntary payment, by the exercise of the right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any or all of the Obligations, (ii) if any of them shall by voluntary payment or by the exercise of any right of counterclaim, set-off, banker's lien or otherwise, receive payment of a proportion of the aggregate amount of the Obligations held by it which is greater than its Pro Rata Share of the payments on account of the Obligations, the one receiving such excess payment shall purchase, without recourse or warranty, an undivided interest and participation (which it shall be deemed to have done simultaneously upon the receipt of such payment) in such Obligations owed to the others so that all such recoveries with respect to such Obligations shall be applied ratably in accordance with their Pro Rata Shares; provided, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to that party to the extent necessary to adjust for such recovery, but without interest except to the extent the purchasing party is required to pay interest in connection with such recovery. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 10.12 may, to the fullest extent permitted by law, exercise all its rights of payment (including, subject to Section 11.04, the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

10.13 Delivery of Documents. Agent shall as soon as reasonably practicable distribute to each Lender at its primary address set forth on the appropriate counterpart signature page hereof or at such other address as a Lender may request in writing, (i) all documents to which such Lender is a party or of which such Lender is a beneficiary set forth on the Closing Checklist attached hereto as Exhibit B and (ii) all documents of which Agent receives copies from Borrower for distribution to Lenders pursuant to Sections 5.01 and 11.07. In addition, within ten (10) Business Days after receipt of a request in writing from a Lender for written

information or documents provided by or prepared by Borrower, the REIT or any Agreement Party, Agent shall deliver such written information or documents to such requesting Lender if Agent has possession of such written information or documents in its capacity as Agent or as a Lender.

10.14 Notice of Events of Default. Except as expressly provided in this Section 10.14, Agent shall not be deemed to have knowledge or notice of the occurrence of any Unmatured Event of Default or Event of Default (other than nonpayment of principal of or interest on the Loan) unless Agent has received notice in writing from a Lender or Borrower referring to this Agreement or the other Loan Documents, describing such event or condition and expressly stating that such notice is a notice of an Unmatured Event of Default or Event of Default. Should Agent receive such notice of the occurrence of an Unmatured Event of Default or Event of Default, or should Agent send Borrower a notice of Unmatured Event of Default or Event of Default, Agent shall promptly give notice thereof to each Lender.

## ARTICLE XI

### MISCELLANEOUS

#### 11.01 Expenses.

(a) Generally. Borrower agrees, within thirty (30) days after receipt of a written notice from the Agent, to pay or reimburse Agent for all of Agent's reasonable costs and expenses incurred by Agent at any time (whether prior to, on or after the date of this Agreement) in connection with: (A) the negotiation, preparation and execution of this Agreement and the other Loan Documents and any amendments or waivers with respect hereto requested by Borrower, including, without limitation, the reasonable fees, expenses and disbursements of Agent's outside counsel incurred in connection therewith; (B) the making of the Loan and (C) the collection or enforcement by Agent of any of the Obligations, including, without limitation, reasonable attorneys' fees and costs incurred in connection therewith.

(b) After Event of Default. Borrower further agrees to pay, or reimburse Agent and Lenders, for all reasonable costs and expenses, including without limitation reasonable attorneys' fees and disbursements incurred by Agent or Lenders after the occurrence of an Event of Default (i) in enforcing any Obligation or exercising or enforcing any other right or remedy available by reason of such Event of Default; (ii) in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or in any insolvency or bankruptcy proceeding; (iii) in commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to Borrower, the REIT or any Agreement Party and related to or arising out of the transactions contemplated hereby; (iv) in taking any other action in or with respect to any suit or proceeding (whether in bankruptcy or otherwise); or (v) attempting to enforce or enforcing any rights under the Loan Documents; provided, however, that the attorneys' fees and disbursements for which Borrower is obligated under this subsection (b) shall be limited to the reasonable non-duplicative fees and disbursements of counsel for Agent and



counsel for all Lenders as a group. For purposes of this Section 11.01(b), (i) counsel for Agent shall mean a single outside law firm representing Agent plus any additional law firms providing special local law representation in connection with the enforcement of the Loan Documents, and (ii) counsel for all Lenders as a group shall mean a single outside law firm representing such Lenders as a group.

#### 11.02 Indemnity.

(a) Generally. Borrower shall indemnify and defend Agent and each Lender and their respective affiliates, participants, officers, directors, employees and agents (each an "Indemnatee") against, and shall hold each such Indemnatee harmless from, any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which such Indemnatee may suffer or incur: (i) in connection with claims made by third parties against such Indemnatee for losses or damages suffered by such third party as a result of (A) such Indemnatee's performance of this Agreement or any of the other Loan Documents, including without limitation such Indemnatee's exercise or failure to exercise any rights, remedies or powers in connection with this Agreement or any of the other Loan Documents or (B) the failure by Borrower, the REIT or any Agreement Party to perform any of their respective obligations under this Agreement or any of the other Loan Documents as and when required hereby or thereby, including without limitation any failure of any representation or warranty of Borrower, the REIT or any Agreement Party to be true and correct; (ii) in connection with any claim or cause of action of any kind by any Person to the effect that such Indemnatee is in any way responsible or liable for any act or omission by Borrower, the REIT or any Agreement Party, whether on account of any theory of derivative liability or otherwise; (iii) in connection with the past, present or future environmental condition of any Property owned by Borrower, the REIT, Subsidiary or any Agreement Party, the presence of asbestos-containing materials at any such Property, the presence of Contaminants in groundwater at any such Property, or the Release or threatened Release of any Contaminant into the environment from any such Property; or (iv) in connection with any claim or cause of action of any kind by any Person which would have the effect of denying such Indemnatee the full benefit or protection of any provision of this Agreement or any of the other Loan Documents.

(b) ERISA. Without limitation of the provisions of subsection (a) above, Borrower shall indemnify and hold each Indemnatee free and harmless from and against all loss, costs (including reasonable attorneys' fees and expenses), expenses, taxes, and damages (including consequential damages) such Indemnatee may suffer or incur by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA or the Internal Revenue Code necessary in such Indemnatee's reasonable judgment by reason of the inaccuracy of the representations and warranties set forth in the first paragraph of Section 4.01(s) or a breach of the provisions set forth in the last paragraph of Section 7.01(f).

(c) Exceptions; Limitations. Notwithstanding anything to the contrary set forth in this Section 11.02, Borrower shall have no obligation to any Indemnatee hereunder with

respect to (i) any intentional tort, fraud or act of gross negligence or bad faith which any Indemnatee is personally determined by the judgment of a court of competent jurisdiction (sustained on appeal, if any) to have committed, (ii) any liability of such Indemnatee to any third party based upon contractual obligations of such Indemnatee owing to such third party which are not expressly set forth in the Loan Documents or (iii) violations of Environmental Laws relating to a Property which are caused by the act or omission of such Indemnatee after such Indemnatee takes possession of such Property and which would not have occurred if such Indemnatee had exercised reasonable care under the circumstances. In addition, the indemnification set forth in this Section 11.02 in favor of any officer, director, partner, employee or agent of Agent or any Lender shall be solely in their respective capacities as such officer, director, partner, employee or agent. Such indemnification in favor of any affiliate of Agent or any Lender shall be solely in its capacity as the provider of services to Agent or such Lender in connection with this Agreement, and such indemnification in favor of any participant of Agent or any Lender shall be solely in its capacity as a participant in the Commitments and the Loan.

(d) Payment; Survival. Borrower shall pay any amount owing under this Section 11.02 within thirty (30) days after written demand therefor by the applicable Indemnatee together with reasonable supporting documentation therefor. The indemnity set forth in this Section 11.02 shall survive the payment of all amounts payable pursuant to, and secured by, this Agreement and the other Loan Documents. Payment by any Indemnatee shall not be a condition precedent to the obligations of Borrower under this Section 11.02. To the extent that any indemnification obligation set forth in this Section 11.02 may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of the applicable indemnified matter.

11.03 Change in Accounting Principles. Except as otherwise provided herein, if any changes in accounting principles from those used in the preparation of the most recent financial statements delivered to Agent pursuant to the terms hereof are hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions) and are adopted by the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party with the agreement of its independent certified public accountants and such changes result in a change in the method of calculation of any of the financial covenants, standards or terms found herein, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such changes with the desired result that the criteria for evaluating the financial condition of the REIT, on a consolidated basis, shall be the same after such changes as if such changes had not been made; provided, however, that no change in GAAP that would affect the method of calculation of any of the financial covenants, standards or terms shall be given effect in such calculations until such provisions are amended, in a manner satisfactory to Agent and all Lenders, to so reflect such change in accounting principles.

11.04 Setoff. In addition to any Liens granted to Agent and any rights now or hereafter granted under applicable law and not by way of limitation of any such Lien or rights,

upon the occurrence and during the continuance of any Event of Default, Agent and each Lender are hereby authorized by Borrower at any time or from time to time, with concurrent notice to Borrower, or to any other Person (any such notice being hereby expressly waived) to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured but not including trust accounts) and any other indebtedness at any time held or owing by Agent or such Lender solely to or for the credit or the account of Borrower against and on account of the Obligations of Borrower to Agent or such Lender including but not limited to the Loan and all claims of any nature or description arising out of or connected with this Agreement or any of the other Loan Documents, irrespective of whether or not (a) Agent or such Lender shall have made any demand hereunder or (b) Agent shall have declared the principal of and interest on the Loan and other amounts due hereunder to be due and payable as permitted by Article X and although said obligations and liabilities, or any of them, may be contingent or unmatured.

11.05 Amendments and Waivers. No amendment or modification of any provision of this Agreement shall be effective without the written agreement of Requisite Lenders (after notice to all Lenders) as provided in Section 10.10(a) and Borrower (provided that the agreement of Requisite Lenders shall not be required for amendments or modifications that are purely of a clerical nature or that correct a manifest error), and no termination or waiver of any such provision of this Agreement (including without limitation any waiver of an Event of Default which does not specifically require the consent of all Lenders), or consent to any departure by Borrower therefrom, shall in any event be effective without the written concurrence of Requisite Lenders (after notice to all Lenders) as provided in Section 10.10(a), which Requisite Lenders shall have the right to grant or withhold at their sole discretion, except that the amendments, modifications or waivers specified in Section 10.10(b) shall require the consent of the Supermajority Lenders and the following amendments, modifications or waivers shall require the consent of all Lenders (other than Section 11.05(i) which shall require the consent of all Lenders other than Agent):

- (a) Increasing the Facility;
- (b) Changing the principal amount or final maturity of the Loan;
- (c) Reducing or increasing the interest rates applicable to the Loan;
- (d) Reducing the rates on which fees payable pursuant hereto are determined;
- (e) Forgiving or delaying any amount payable under Article II (other than late fees);
- (f) Changing the definition of "Requisite Lenders," "Supermajority Lenders," or "Pro Rata Shares";
- (g) Changing any provision contained in Section 11.05;

(h) Releasing any obligor under any Loan Document, unless such release is otherwise required by the terms of this Agreement or any other Loan Document;

(i) Removal of Agent for good cause in accordance with Section 10.09(a); and

(j) Modifying or waiving any other provision herein which specifically requires the consent of all Lenders.

Notwithstanding anything to the contrary contained in this Agreement, Borrower shall have no right to consent to any amendment, modification, termination or waiver of any provision of Article X hereof; provided, however, that no amendment, modification, termination or waiver of Section 10.09(b), 10.09(c), 10.10(a), or 10.11 (except subsection (i) thereof) which has an adverse effect on Borrower or Borrower's rights hereunder shall be effective without the written concurrence of Borrower. Agent and Lenders further acknowledge and agree that the remaining provisions of Article X are intended to and shall continue to address only the rights and obligations of Agent and Lenders amongst each other and do not and shall not impose obligations or restrictions upon Borrower or result in any way in the loss of any rights, claims or defenses of Borrower. No amendment, modification, termination or waiver of any provision of Article X hereof or any other provision referring to any Agent shall be effective without the written concurrence of the Agent. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section shall be binding on each assignee, transferee or recipient of Agent's powers, functions or duties or any Lender's Commitment under this Agreement or the Loan at the time outstanding.

11.06 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Event of Default or Unmatured Event of Default if such action is taken or condition exists.

11.07 Notices and Delivery. Unless otherwise specifically provided herein, any consent, notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or if deposited in the United States mail (registered or certified, with postage prepaid and properly addressed) upon receipt or refusal to accept delivery. Notices to Agent shall not be effective until received by Agent. For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section 11.07) shall be as set forth below each party's name on the signature pages hereof, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties. All deliveries to be made to Agent for distribution to the Lenders shall be made to Agent at the addresses specified for notice on the signature page hereto and, in addition, a sufficient

number of copies of each such delivery shall be delivered to Agent for delivery to each Lender at the address specified for deliveries on the signature page hereto or such other address as may be designated by Agent or Lenders in a written notice.

11.08 Survival of Warranties, Indemnities and Agreements. All agreements, representations, warranties and indemnities made or given herein or pursuant hereto shall survive the execution and delivery of this Agreement and the other Loan Documents and the making and repayment of the Loan hereunder and such indemnities shall survive termination hereof.

11.09 Failure or Indulgence Not Waiver; Remedies Cumulative. Except as otherwise expressly provided in this Agreement or any other Loan Document, no failure or delay on the part of Agent or any Lender in the exercise of any power, right or privilege under any of the Loan Documents shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under the Loan Documents are cumulative to and not exclusive of any rights or remedies otherwise available.

11.10 Marshaling; Recourse to Security; Payments Set Aside. Neither any Lender nor Agent shall be under any obligation to marshal any assets in favor of Borrower or any other party or against or in payment of any or all of the Obligations. Recourse to security shall not be required at any time. To the extent that Borrower makes a payment or payments to Agent or the Lenders or Agent or the Lenders exercise their rights of set off, and such payment or payments or the proceeds of such enforcement or set off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/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 recovery, the Obligations or part thereof originally intended to be satisfied, and all rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

11.11 Severability. In case any provision in or obligation under this Agreement or the other Loan Documents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

11.12 Headings. 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 or be given any substantive effect.

11.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.

11.14 Limitation of Liability. To the extent permitted by applicable law, no claim may be made by Borrower, the REIT, any Lender or any other Person against Agent or any Lender, or the affiliates, directors, officers, employees, attorneys or agents of any of them, for any punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement, or any act, omission or event occurring in connection therewith; and Borrower, the REIT and each Lender hereby waive, release and agree not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

11.15 Successors and Assigns. This Agreement and the other Loan Documents shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Agent and Lenders. The terms and provisions of this Agreement shall inure to the benefit of any permitted assignee or transferee of the Loan and the Commitments of Lenders under this Agreement, and in the event of such transfer or assignment, the rights and privileges herein conferred upon Agent and Lenders shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. Borrower's rights or any interest therein hereunder, and Borrower's duties and obligations hereunder, shall not be assigned (whether directly, indirectly, by operation of law or otherwise) without the consent of all Lenders.

11.16 Usury Limitation. Each Loan Document is expressly limited so that in no contingency or event whatsoever, whether by reason of error of fact or law, payment, prepayment or advancement of the proceeds of the Loan, acceleration of maturity of the unpaid principal balance of the Loan, or otherwise, shall the amount paid or agreed to be paid to Lenders for the use, forbearance, or retention of money, including any fees or charges collected or made in connection with the Loan which may be treated as interest under applicable law, if any, exceed the maximum legal limit (if any such limit is applicable) under United States federal laws or state laws (to the extent not preempted by federal law, if any), now or hereafter governing the interest payable under such Loan Documents. If, from any circumstances whatsoever, fulfillment of any provision hereof or any of the other Loan Documents at the time performance of such provision shall be due, shall involve transcending the limit of validity (if any) prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances Lenders shall ever receive as interest an amount which would exceed the maximum legal limit (if any such limit is applicable), such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Loan Documents and not to the payment of interest or, if necessary, to Borrower. Notwithstanding any other provision of this Agreement or any of the other Loan Documents, this provision shall control every other provision of all Loan Documents.

11.17 Confidentiality. Agent and Lenders shall use reasonable efforts to assure that any information about Borrower, the REIT, Subsidiaries and Investment Affiliates (and their respective Properties) not generally disclosed to the public which is furnished to Agent or Lenders pursuant to the provisions of this Agreement or any of the other Loan Documents is

used only for the purposes of this Agreement and the other Loan Documents and shall not be divulged to any other Person other than Agent, Lenders and their respective affiliates, officers, directors, employees and agents who are actively and directly participating in the evaluation, administration or enforcement of the Obligations; provided, however, that nothing herein shall affect the disclosure of any such information (i) to the extent required by statute, rule, regulation or judicial process, (ii) to counsel for Agent or Lenders or to their accountants, (iii) to bank examiners and auditors, (iv) to any transferee or participant or prospective transferee or participant hereunder who agrees to be bound by this provision, (v) in connection with the enforcement of the rights of Agent and Lenders under this Agreement and the other Loan Documents, or (vi) in connection with any litigation to which Agent or any Lender is a party so long as Agent or such Lender provides Borrower with prior written notice of the need for such disclosure and exercises reasonable efforts to obtain a protective order with respect to such information from the court or other tribunal before which such litigation is pending.

11.18 CONSENT TO JURISDICTION AND SERVICE OF PROCESS; WAIVER OF JURY TRIAL; WAIVER OF PERMISSIVE COUNTERCLAIMS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST BORROWER OR THE REIT WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE AND ALL JUDICIAL PROCEEDINGS BROUGHT BY BORROWER OR THE REIT WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION HAVING SITUS WITHIN THE BOUNDARIES OF THE FEDERAL COURT DISTRICT OF THE NORTHERN DISTRICT OF ILLINOIS, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWER AND THE REIT ACCEPT, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY FROM WHICH NO APPEAL HAS BEEN TAKEN OR IS AVAILABLE. BORROWER AND THE REIT HEREBY DESIGNATE AND APPOINT ELLEN KELLEHER, ESQ., MANUFACTURED HOME COMMUNITIES, INC., TWO NORTH RIVERSIDE PLAZA, SUITE 800, CHICAGO, ILLINOIS 60606, TO RECEIVE ON THEIR BEHALF SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT, SUCH SERVICE BEING HEREBY ACKNOWLEDGED BY SUCH PERSON TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. SUCH APPOINTMENT SHALL BE REVOCABLE ONLY WITH AGENT'S PRIOR WRITTEN APPROVAL. BORROWER AND THE REIT IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS RESPECTIVE NOTICE ADDRESS SPECIFIED ON THE SIGNATURE PAGES HEREOF, SUCH SERVICE TO BECOME EFFECTIVE UPON RECEIPT. BORROWER, THE REIT, AGENT AND LENDERS IRREVOCABLY WAIVE (A) TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND (B) ANY OBJECTION (INCLUDING WITHOUT LIMITATION ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING

OF ANY SUCH ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY JURISDICTION SET FORTH ABOVE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. BORROWER AND THE REIT AGREE THAT THEY WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIM IN ANY PROCEEDING BROUGHT BY LENDER WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT.

11.19 Counterparts; Effectiveness; Inconsistencies. This Agreement and any amendments, waivers, consents or supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. This Agreement shall become effective when Borrower, the initial Lenders and Agent have duly executed and delivered counterpart execution pages of this Agreement to each other (delivery by Borrower and the REIT to Lenders and by any Lender to Borrower, the REIT and any other Lender being deemed to have been made by delivery to Agent). This Agreement and each of the other Loan Documents shall be construed to the extent reasonable to be consistent one with the other, but to the extent that the terms and conditions of this Agreement are actually and directly inconsistent with the terms and conditions of any other Loan Document, this Agreement shall govern.

11.20 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

11.21 Entire Agreement. This Agreement, taken together with all of the other Loan Documents and all certificates and other documents delivered by Borrower to Agent in connection herewith, embodies the entire agreement and supersedes all prior agreements, written and oral, relating to the subject matter hereof.

11.22 Agent's Action for Its Own Protection Only. The authority herein conferred upon Agent, and any action taken by Agent, to inspect any Property will be exercised and taken by Agent for its own protection only and may not be relied upon by Borrower for any purposes whatsoever, and Agent shall not be deemed to have assumed any responsibility to Borrower with respect to any such action herein authorized or taken by Agent. Any review, investigation or inspection conducted by Agent, any consultants retained by Agent or any agent or representative of Agent in order to verify independently Borrower's satisfaction of any conditions precedent to the Loan, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Agreement, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Agent or Lenders of) (i) any of Borrower's representations and warranties under this Agreement or Agent's or Lenders' reliance thereon or (ii) Agent's or Lenders' reliance upon any certifications of Borrower required under this



Agreement or any other facts, information or reports furnished to Agent and Lenders by Borrower hereunder.

11.23 Lenders' ERISA Covenant. Each Lender, by its signature hereto or on the applicable Assignment and Assumption, hereby agrees (a) that on the date any Loan is disbursed hereunder no portion of such Lender's Pro Rata Share of such Loan will constitute "assets" within the meaning of 29 C.F.R. ss. 2510.3-101 of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code, and (b) that following such date such Lender shall not allocate such Lender's Pro Rata Share of any Loan to an account of such Lender if such allocation (i) by itself would cause such Pro Rata Share of such Loan to then constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code and (ii) by itself would cause such Loan to constitute a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or any Agent or Lender being deemed in violation of Section 404 of ERISA.

11.24. Sole Lead Arranger, Documentation Agents and Syndication Agent. Each of the parties to this Agreement acknowledges and agrees that the obligations of Sole Lead Arranger, each Documentation Agent and Syndication Agent hereunder shall be limited to those obligations that are expressly set forth herein, if any, and Sole Lead Arranger, either Documentation Agent and Syndication Agent shall not be required to take any action or assume any liability except as may be required in their respective capacities as a Lender hereunder. Each of the parties to this Agreement agrees that, for purposes of the indemnifications set forth herein, the term "Agent" shall be deemed to include Sole Lead Arranger, each Documentation Agent and Syndication Agent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

"Borrower"

MHC OPERATING LIMITED PARTNERSHIP, an  
Illinois limited partnership

By: MANUFACTURED HOME  
COMMUNITIES, INC., a Maryland  
corporation, as General Partner

By: /s/ JOHN M. ZOELLER

-----  
Name: John M. Zoeller  
Title: Vice President/Chief Financial Officer

Address:  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606  
Telecopy: 312/279-1710

"REIT"

MANUFACTURED HOME COMMUNITIES,  
INC., a Maryland corporation

By: /s/ JOHN M. ZOELLER

-----  
Name: John M. Zoeller  
Title: Vice President/Chief Financial Officer

Address:  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606  
Telecopy: 312/279-1710

"Lenders"

WELLS FARGO BANK, N.A., as Agent, as Sole  
Lead Arranger and as a Lender

By: /s/ Steven R. Lowery

-----  
Name: Steven R. Lowery

-----  
Title: Vice President  
-----

Address:

225 West Wacker Drive, Suite 2550  
Chicago, Illinois 60606  
Attn.: Senior Loan Officer  
Telecopy: 312/782-0969

with a copy to:

Wells Fargo & Co.  
Real Estate Group  
420 Montgomery Street, Floor 6  
San Francisco, California 94163  
Attn.: Chief Credit Officer  
Telecopy: 415/391-2971

with a copy to (for Financial Statements  
and Reporting Information Only):

Wells Fargo Bank  
2030 Main Street  
Suite 800  
Irvine, California 92714  
Attn: Jim Furuyama  
Telecopy: 949/251-4343

Loan Commitment:                   \$40,000,000  
40%

BANK OF AMERICA, N.A., as Syndication Agent  
and as a Lender

By: /s/ Megan McBride

-----  
Name: Megan McBride

-----  
Title: Principal  
-----

Address:  
231 S. LaSalle Street, 15th Floor  
Chicago, Illinois 60697  
Attn.: Megan McBride  
Telecopy: 312/974-4970

Loan Commitment: \$20,000,000  
20%

S-3

COMMERZBANK AKTIENGESELLSCHAFT,  
New York Branch, as a Documentation Agent  
and as a Lender

By: /s/ Ralph Marra

-----  
Name: Ralph Marra

-----  
Title: Vice President  
-----

By: /s/ David Buettner

-----  
Name: David Buettner

-----  
Title: Assistant Vice President  
-----

Address:  
1251 Avenue of the Americas  
New York, New York 10020  
Attn.: David Buettner  
Telecopy: 212-400-577

Loan Commitment:                   \$20,000,000  
  20%

S-4

JP MORGAN CHASE BANK (successor by merger  
to Morgan Guaranty Trust Company of New York),  
as a Documentation Agent and as a Lender

By: /s/ Marc E. Costantino

-----  
Name: Marc E. Costantino

-----  
Title: Vice President  
-----

Address:

60 Wall Street, 22nd Floor  
New York, New York 10260-0060  
Attn.: Avin Dwivedy  
Telecopy: 212/648-8111

Loan Commitment:                   \$20,000,000  
  20%

THIRD AMENDED AND RESTATED  
CREDIT AGREEMENT  
(REVOLVING FACILITY)

AMONG

MHC OPERATING LIMITED PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP,  
AS BORROWER,

MANUFACTURED HOME COMMUNITIES, INC.,  
A MARYLAND CORPORATION,  
THE REIT

WELLS FARGO BANK, N.A.,

BANK OF AMERICA, N.A.,

COMMERZBANK AKTIENGESELLSCHAFT,  
NEW YORK BRANCH,

AND

LASALLE BANK NATIONAL ASSOCIATION

TOGETHER WITH THOSE ASSIGNEES  
BECOMING PARTIES HERETO PURSUANT  
TO SECTION 11.13, AS LENDERS,

WELLS FARGO BANK, N.A.  
AS AGENT, SOLE LEAD ARRANGER,  
SWINGLINE LENDER AND ISSUING LENDER,

BANK OF AMERICA, N.A.,  
AS SYNDICATION AGENT,

AND

LASALLE BANK NATIONAL ASSOCIATION,  
AS DOCUMENTATION AGENT

DATED AS OF FEBRUARY 9, 2002

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EXHIBITS

- - - - -

- A - Assignment and Assumption
- B - REIT Guaranty
- C - [Intentionally Deleted]
- D - Revolving Loan Notes
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- 5.01(c) - Ownership of Borrower
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### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDED AND RESTATED CREDIT AGREEMENT is dated as of February \_\_, 2002 (as amended, supplemented or modified from time to time, the "Agreement") and is among MHC Operating Limited Partnership, an Illinois limited partnership ("Borrower"), Manufactured Home Communities, Inc., a Maryland corporation (the "REIT"), each of the Lenders, as hereinafter defined, Wells Fargo Bank, N.A ("Wells Fargo") in its capacity as Agent, as Sole Lead Arranger, as Swingline Lender, as Issuing Lender and as a Lender, Bank of America, N.A., as Syndication Agent and as a Lender, LaSalle Bank National Association, as Documentation Agent and as a Lender, and Commerzbank Aktiengesellschaft, New York Branch, as a Lender.

#### RECITALS

A. Borrower, the REIT and Wells Fargo Realty Advisors Funding Incorporated ("WFRF"), in its capacity as Agent and as the sole Lender, have previously entered into that certain Credit Agreement dated as of August 16, 1994 (the "Original Credit Agreement").

B. The Original Credit Agreement was amended and restated in its entirety by that certain First Amended and Restated Credit Agreement dated as of September 26, 1994 (the "First Amended Credit Agreement") by and among Borrower, the REIT, WFRF, as Agent and as a Lender, and Bank of America Illinois, as Co-Agent and as Lender.

C. The First Amended Credit Agreement was amended and restated in its entirety by that certain Second Amended and Restated Credit Agreement dated as of April 28, 1998 (the "Existing Credit Agreement") by and among Borrower, the REIT, Wells Fargo (as successor in interest to WFRF), as Agent, Swingline Lender, Issuing Lender, and a Lender, Bank of America National Trust and Savings Association, as Syndication Agent and as a Lender, Morgan Guaranty Trust Company of New York, as Documentation Agent and as a Lender, and Commerzbank Aktiengesellschaft, New York Branch, as a Lender.

D. The Existing Credit Agreement has been amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of December 18, 1998 (the "First Amendment") and that certain Second Amendment to Second Amended and Restated Credit Agreement dated as of August 9, 2000 (the "Second Amendment").

E. The "Lenders" under the Existing Credit Agreement (as so amended) are Wells Fargo, Bank of America National Trust and Savings Association (as successor in interest to Bank of America Illinois), Commerzbank Aktiengesellschaft, New York Branch and LaSalle Bank National Association (the "Existing Lenders").

F. Borrower, the REIT, Wells Fargo, as Agent, Sole Lead Arranger, Swingline Lender, Issuing Lender and as a Lender, Bank of America National Trust and Savings Association, as Syndication Agent and as a Lender, LaSalle Bank National Association, as Documentation Agent and as a Lender and the other Lenders desire to further amend and restate the Existing Credit Agreement (as so amended) in its entirety to make certain modifications as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

ARTICLE I.  
DEFINITIONS

Certain Defined Terms. The following terms used in this Agreement shall have the following meanings (such meanings to be applicable, except to the extent otherwise indicated in a definition of a particular term, both to the singular and the plural forms of the terms defined):

"Accommodation Obligations" as applied to any Person, means any obligation, contingent or otherwise, of that Person in respect of which that Person is liable for any Indebtedness or other obligation or liability of another Person, including without limitation and without duplication (i) any such Indebtedness, obligation or liability directly or indirectly guaranteed, endorsed (otherwise than for collection or deposit in the ordinary course of business), co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable, including Contractual Obligations (contingent or otherwise) arising through any agreement to purchase, repurchase or otherwise acquire such Indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency, assets, level of income, or other financial condition, or to make payment other than for value received and (ii) any obligation of such Person arising through such Person's status as a general partner of a general or limited partnership with respect to any Indebtedness, obligation or liability of such general or limited partnership.

"Accountants" means any nationally recognized independent accounting firm.

"Adjusted Asset Value" means, as of any date of determination, (i) for any Property for which an acquisition or disposition by Borrower or any Subsidiary has not occurred in the Fiscal Quarter most recently ended as of such date, the product of four (4) and a fraction, the numerator of which is EBITDA for such Fiscal Quarter attributable to such Property in a manner reasonably acceptable to Agent, and the denominator of which is eight hundred seventy-five ten-thousandths (0.0875), and (ii) for any Property which has been acquired by Borrower or any Subsidiary in the Fiscal Quarter most recently ended as of such date, the Net Price of the Property paid by Borrower or such Subsidiary for such Property.

"Affiliates" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means (a) the possession, directly or indirectly, of the power to vote twenty-five percent (25%) or more of the Securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise, (b) the ownership of a general

partnership interest in such Person or (c) the ownership of twenty-five percent (25%) or more of the limited partnership interests (or other ownership interests with similarly limited voting rights) in such Person; provided, however, that in no event shall the Affiliates of Borrower or any Subsidiary or any Investment Affiliate include Persons holding direct or indirect ownership interests in the REIT or any other real estate investment trust which holds a general partnership interest in Borrower if such Person does not otherwise constitute an "Affiliate" hereunder; provided, further, that the REIT and Borrower shall at all times be deemed Affiliates of each other.

"Agent" means Wells Fargo in its capacity as administrative agent for the Lenders under this Agreement, and shall include any successor Agent appointed pursuant hereto and shall be deemed to refer to Wells Fargo in its individual capacity as a Lender where the context so requires.

"Agreement" has the meaning ascribed to such term in the preamble hereto.

"Agreement Party" means any Person, other than the REIT and Borrower, which concurrently with the execution of this Agreement or hereafter executes and delivers a guaranty in connection with this Agreement, which as of the date of determination, is in force and effect.

"Applicable Margin" means, for any day, the rate per annum set forth below opposite the applicable Level Period then in effect:

Level Period -----	Applicable Margin -----
Level I Period	1.0%
Level II Period	1.125%

The Applicable Margin shall be adjusted for all purposes quarterly as soon as reasonably practicable, but not later than five (5) days, after the date of receipt by Agent of the quarterly financial information in accordance with the provisions of Section 6.01(a) hereof, together with a calculation by Borrower of the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries as of the end of the applicable Fiscal Quarter. No adjustment in the Applicable Margin shall be made retroactively.

"Assignment and Assumption" means an Assignment and Assumption in the form of Exhibit A hereto (with blanks appropriately filled in) delivered to Agent in connection with each assignment of a Lender's interest under this Agreement pursuant to Section 11.13.

"Balloon Payment" means, with respect to any loan constituting Indebtedness, any required principal payment of such loan which is either (i) payable at the maturity of such loan or (ii) in an amount which exceeds twenty-five percent (25%) of the original principal amount of such loan; provided, however, that the final payment of a fully amortizing loan shall not constitute a Balloon Payment.

"Base Rate" means, on any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall at all times be equal to the higher of (a) the base rate of interest per annum established from time to time by Wells Fargo, and designated as its prime

rate and in effect on such day, and (b) the Federal Funds Rate as announced by the Federal Reserve Bank of New York, in effect on such day plus one half percent (0.5%) per annum. Each change in the Base Rate shall become effective automatically as of the opening of business on the date of such change in the Base Rate, without prior written notice to Borrower or Lenders. The Base Rate may not be the lowest rate of interest charged by any bank, Agent or Lender on similar loans.

"Base Rate Loans" means those Loans bearing interest at the Base Rate.

"Base Rent" means the aggregate rent received, on a consolidated basis, by Borrower or any Subsidiary from tenants which lease manufactured home community sites owned by Borrower or any Subsidiary minus any amounts specifically identified as and representing payments for trash removal, cable television, water, electricity, other utilities, taxes and other rent which reimburses expenses related to the tenant's occupancy.

"Benefit Plan" means any employee pension benefit plan as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) which a Person or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or, within the immediately preceding five (5) years, maintained, administered, contributed to or was required to contribute to, or under which a Person or any ERISA Affiliate may have any liability.

"Borrower" has the meaning ascribed to such term in the preamble hereto.

"Borrower Plan" shall mean any Plan (A) which Borrower, any of its Subsidiaries or any of its ERISA Affiliates maintains, administers, contributes to or is required to contribute to, or, within the five years prior to the Closing Date, maintained, administered, contributed to or was required to contribute to, or under which Borrower, any of its Subsidiaries or any of its ERISA Affiliates may incur any liability and (B) which covers any employee or former employee of Borrower, any of its Subsidiaries or any of its ERISA Affiliates (with respect to their relationship with such entities).

"Borrower's Share" means Borrower's and/or the REIT's collective direct or indirect share of the assets, liabilities, income, expenses or expenditures, as applicable, of an Investment Affiliate based upon Borrower's and/or the REIT's percentage ownership (whether direct or indirect) of such Investment Affiliate, as the case may be.

"Borrowing" means a borrowing under the Facility.

"Business Day" means (a) with respect to any Borrowing, payment or rate determination of LIBOR Loans, a day, other than a Saturday or Sunday, on which Agent is open for business in Chicago and San Francisco and on which dealings in Dollars are carried on in the London inter bank market, and (b) for all other purposes any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the States of California and Illinois, or is a day on which banking institutions located in California and Illinois are required or authorized by law or other governmental action to close.

"Capital Expenditures" means, as applied to any Person for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities during that period and including that portion of Capital Leases which is capitalized on the balance sheet of a

Person) by such Person during such period that, in conformity with GAAP, are required to be included in or reflected by the property, plant or equipment or similar fixed asset accounts reflected in the balance sheet of such Person, excluding any expenditures reasonably determined by such Person as having been incurred for expansion of the number of manufactured home sites at a manufactured home community owned by such Person.

"Capital Leases," as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States, in each case maturing within one (1) year after the date of acquisition thereof; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within ninety (90) days after the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from any two nationally recognized rating services reasonably acceptable to Agent; (c) domestic corporate bonds, other than domestic corporate bonds issued by Borrower or any of its Affiliates, maturing no more than 2 years after the date of acquisition thereof and, at the time of acquisition, having a rating of at least A or the equivalent from two nationally recognized rating services reasonably acceptable to Agent; (d) variable-rate domestic corporate notes or medium term corporate notes, other than notes issued by Borrower or any of its Affiliates, maturing or resetting no more than 1 year after the date of acquisition thereof and having a rating of at least AA or the equivalent from two nationally recognized rating services reasonably acceptable to Agent; (e) commercial paper (foreign and domestic) or master notes, other than commercial paper or master notes issued by Borrower or any of its Affiliates, and, at the time of acquisition, having a long-term rating of at least A or the equivalent from a nationally recognized rating service reasonably acceptable to Agent and having a short-term rating of at least A-1 and P-1 from S&P and Moody's, respectively (or, if at any time neither S&P nor Moody's shall be rating such obligations, then the highest rating from such other nationally recognized rating services reasonably acceptable to Agent); (f) domestic and Eurodollar certificates of deposit or domestic time deposits or Eurotime deposits or bankers' acceptances (foreign or domestic) that are issued by a bank (I) which has, at the time of acquisition, a long-term rating of at least A or the equivalent from a nationally recognized rating service reasonably acceptable to Agent and (II) if a domestic bank, which is a member of the FDIC; and (g) overnight securities repurchase agreements, or reverse repurchase agreements secured by any of the foregoing types of securities or debt instruments, provided that the collateral supporting such repurchase agreements shall have a value not less than 101% of the principal amount of the repurchase agreement plus accrued interest.

"Closing Date" means the date on which this Agreement shall become effective in accordance with Section 12.19, which date shall be February \_\_, 2002 or such later date as to which Agent and Borrower agree in writing.

"Commission" means the Securities and Exchange Commission.

"Commitment" means, with respect to any Lender, such Lender's Pro Rata Share of the Facility which amount shall not exceed the principal amount set out under such Lender's

name under the heading "Loan Commitment" on the counterpart signature pages attached to this Agreement or as set forth on an Assignment and Assumption executed by such Lender, as assignee, as such amount may be adjusted pursuant to the terms of this Agreement.

"Contaminant" means any pollutant (as that term is defined in 42 U.S.C. 9601(33)) or toxic pollutant (as that term is defined in 33 U.S.C. 1362(13)), hazardous substance (as that term is defined in 42 U.S.C. 9601(14)), hazardous chemical (as that term is defined by 29 C.F.R. Section 1910.1200(c)), toxic substance, hazardous waste (as that term is defined in 42 U.S.C. 6903(5)), radioactive material, special waste, petroleum (including crude oil or any petroleum-derived substance, waste, or breakdown or decomposition product thereof), or any constituent of any such substance or waste, including, but not limited to hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances, PCBs, pesticides, herbicides, asbestos, sewage sludge, industrial slag, acids, metals, or solvents.

"Contractual Obligation," as applied to any Person, means any provision of any Securities issued by that Person or any indenture, mortgage, deed of trust, lease, contract, undertaking, document or instrument to which that Person is a party or by which it or any of its properties is bound, or to which it or any of its properties is subject (including without limitation any restrictive covenant affecting such Person or any of its properties).

"Controlled Ownership Interests" means ownership interests in a Person where the REIT or Borrower (independently or collectively) has control over the management and operations of such Person.

"Convertible Securities" means evidences of indebtedness, shares of stock, limited or general partnership interests or other ownership interests, warrants, options, or other rights or securities which are convertible into or exchangeable for, with or without payment of additional consideration, shares of common stock of the REIT or partnership interests of Borrower, as the case may be, either immediately or upon the arrival of a specified date or the happening of a specified event.

"Court Order" means any judgment, writ, injunction, decree, rule or regulation of any court or Governmental Authority binding upon the Person in question.

"Debt Service" means, for any period, Interest Expense for such period plus scheduled principal amortization (exclusive of Balloon Payments) for such period on all Indebtedness of the REIT, on a consolidated basis.

"Defaulting Lender" means any Lender which fails or refuses to perform its obligations under this Agreement within the time period specified for performance of such obligation or, if no time frame is specified, if such failure or refusal continues for a period of two (2) Business Days after written notice from Agent.

"Development Activity" means construction in process, that is being performed by or at the direction of Borrower, any Subsidiary or any Investment Affiliate, of any manufactured home community that will be owned and operated by Borrower, any Subsidiary or any Investment Affiliate upon completion of construction, including construction in process of



manufactured home communities not owned by Borrower, any Subsidiary or any Investment Affiliate but which Borrower, any Subsidiary or any Investment Affiliate has the contractual obligation to purchase, but excluding construction in process for the purpose of expanding manufactured home communities that have been operated for at least one (1) year prior to the commencement of such expansion.

"Documentation Agent" means LaSalle Bank National Association in its capacity as documentation agent for the Lenders under this Agreement.

"DOL" means the United States Department of Labor and any successor department or agency.

"Dollars" and "\$" means the lawful money of the United States of America.

"EBITDA" means, for any period and without duplication (i) Net Income for such period, plus (ii) depreciation and amortization expense and other non-cash items deducted in the calculation of Net Income for such period, plus (iii) Interest Expense deducted in the calculation of Net Income for such period, plus, (iv) Taxes deducted in the calculation of Net Income for such period, minus (v) the gains (and plus the losses) from extraordinary or unusual items or asset sales or write-ups or forgiveness of indebtedness included in the calculation of Net Income, for such period, minus (vi) earnings of Subsidiaries for such period distributed to third parties, plus (or minus in the case of a loss) (vii) Borrower's Share of the net income (or loss) of each Investment Affiliate for such period calculated in conformity with GAAP before depreciation, minus (or plus in the case of a loss) (viii) Borrower's Share of the gains (or losses) from extraordinary or unusual items or asset sales or write-ups or forgiveness of indebtedness included in the calculation of the net income of each Investment Affiliate for such period.

"Environmental Laws" means all federal, state, district, local and foreign laws, and all orders, consent orders, judgments, notices, permits or demand letters issued, promulgated or entered thereunder, relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or industrial substances or Contaminants into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contamination, chemicals, industrial substances or Contaminants. The term Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Toxic Substances Control Act, as amended; the Hazardous Materials Transportation Act, as amended; the Resource Conservation and Recovery Act, as amended ("RCRA"); the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; the Clean Air Act, as amended; all analogous state laws; the plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar laws, regulations, rules or ordinances now or hereafter in effect regulating public health, welfare or the environment.

"Environmental Lien" means a Lien in favor of any Governmental Authority for (a) any liability under federal or state Environmental Laws or regulations, or (b) damages arising

from, or costs incurred by such Governmental Authority in response to, a Release or threatened Release of a Contaminant into the environment

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

"ERISA Affiliate" means any (a) corporation which is, becomes, or is deemed by any Governmental Authority to be a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Internal Revenue Code) as a Person or is so deemed by such Person, (b) partnership, trade or business (whether or not incorporated) which is, becomes or is deemed by any Governmental Authority to be under common control (within the meaning of Section 414(c) of the Internal Revenue Code) with such Person or is so deemed by such Person, (c) any Person which is, becomes or is deemed by any Governmental Authority to be a member of the same "affiliated service group" (as defined in Section 414(m) of the Internal Revenue Code) as such Person or is so deemed by such Person, or (d) any other organization or arrangement described in Section 414(o) of the Internal Revenue Code which is, becomes or is deemed by such Person or by any Governmental Authority to be required to be aggregated pursuant to regulations issued under Section 414(o) of the Internal Revenue Code with such Person pursuant to Section 414(o) of the Internal Revenue Code or is so deemed by such Person.

"Event of Default" means any of the occurrences set forth in Article X after the expiration of any applicable grace period expressly provided therein.

"Existing Credit Agreement" has the meaning set forth in the Recitals hereto.

"Existing Loans" means the "Loans" as defined in the Existing Credit Agreement.

"Facility" means the loan facility of up to One Hundred Fifty Million Dollars (\$150,000,000) described in Section 2.01(a).

"FDIC" means the Federal Deposit Insurance Corporation or any successor thereto.

"Federal Funds Rate" means, for any period, a fluctuating interest rate, rounded upwards to the nearest one hundredth of one percent (0.01%), per annum equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal Funds brokers of recognized standing selected by Agent.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any governmental authority succeeding to its functions.

"Financial Statements" has the meaning ascribed to such term in Section 6.01(a).

"First Extended Maturity Date" has the meaning ascribed to such term in Section 3.01.

"FIRREA" means the Financial Institutions Recovery, Reform and Enforcement Act of 1989, as amended from time to time.

"First Amendment" has the meaning set forth in the Recitals hereto.

"First Amended Credit Agreement" has the meaning set forth in the Recitals hereto.

"First Extended Maturity Date" has the meaning set forth in Section 3.01.

"Fiscal Quarter" means a fiscal quarter of a Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and the REIT which shall be the twelve (12) month period ending on the last day of December in each year.

"Fixed Charges" for any Fiscal Quarter period means the sum of (i) Debt Service for such period, (ii) 3% of Base Rent for such period, and (iii) Borrower's Share of Capital Expenditures from each Investment Affiliate for such period.

"Funding Date" means, with respect to any Loan made after the Closing Date, the date of the funding of such Loan.

"Funds from Operations" means the definition of "Funds from Operations" of the National Association of Real Estate Investment Trusts on the date of determination (before allocation to minority interests).

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination and which are consistent with the past practices of the REIT and Borrower.

"Governmental Authority" means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gross Asset Value" means with respect to any Person as of any date of determination, the sum of the Adjusted Asset Values for each Property then owned by such Person plus the value of any cash or Cash Equivalent owned by such Person and not subject to any Lien.

"Indebtedness," as applied to any Person (and without duplication), means (a) all indebtedness, obligations or other liabilities (whether secured, unsecured, recourse, non-recourse, direct, senior or subordinate) of such Person for borrowed money, (b) all indebtedness, obligations or other liabilities of such Person evidenced by Securities or other similar instruments, (c) all reimbursement obligations and other liabilities of such Person with respect to letters of credit or banker's acceptances issued for such Person's account or other similar instruments for which a contingent liability exists, (d) all obligations of such Person to pay the

deferred purchase price of Property or services, (e) all obligations in respect of Capital Leases of such Person, (f) all Accommodation Obligations of such Person, (g) all indebtedness, obligations or other liabilities of such Person or others secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are assumed by, or are a personal liability of, such Person, (h) all indebtedness, obligations or other liabilities (other than interest expense liability) in respect of Interest Rate Contracts and foreign currency exchange agreements excluding all indebtedness, obligations or other liabilities in respect of such Interest Rate Contracts to the extent that the aggregate notional amount thereof does not exceed the aggregate principal amount of any outstanding fixed or floating rate Indebtedness, obligations or other liabilities permitted under this Agreement that exist as of the date that such Interest Rate Contracts are entered into or that are incurred no more than thirty (30) days after such Interest Rate Contracts are entered into and (i) ERISA obligations currently due and payable.

"Initial Maturity Date" means August 9, 2003.

"Interest Expense" means, for any period and without duplication, total interest expense, whether paid, accrued or capitalized (including loan and letter of credit fees and the interest component of Capital Leases but excluding interest expense covered by an interest reserve established under a loan facility) of the REIT, on a consolidated basis and determined in accordance with GAAP.

"Interest Period" means, relative to any LIBOR Loans comprising part of the same Borrowing, the period beginning on (and including) the date on which such LIBOR Loans are made as, or converted into, LIBOR Loans, and shall end on (but exclude) the day which numerically corresponds to such date one (1), two (2), three (3), six (6) or twelve (12) months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), in either case as Borrower may select in its relevant Notice of Borrowing pursuant to Section 2.01(b); provided, however, that:

(a) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day);

(b) no Interest Period may end later than the Termination Date; and

(c) with the reasonable approval of Agent (unless any Lender has previously advised Agent and Borrower that it is unable to enter into LIBOR contracts for an Interest Period of such duration), an Interest Period may have a duration of less than one (1) month.

"Interest Rate Contracts" means, collectively, interest rate swap, collar, cap or similar agreements providing interest rate protection.

"Interim Period" has the meaning ascribed to such term in Section 4.01(g).

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Investment" means, as applied to any Person, any direct or indirect purchase or other acquisition by that Person of Securities, or of a beneficial interest in Securities, of any other Person, and any direct or indirect loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, advances to employees and similar items made or incurred in the ordinary course of business), or capital contribution by such Person to any other Person, including all Indebtedness and accounts owed by that other Person which are not current assets or did not arise from sales of goods or services to that Person in the ordinary course of business. The amount of any Investment shall be determined in conformity with GAAP except as otherwise specifically provided herein.

"Investment Affiliate" means any Person in whom the REIT, Borrower or any Subsidiary holds an equity interest, directly or indirectly, whose financial results are not consolidated under GAAP with the financial results of the REIT or Borrower on the consolidated financial statements of the REIT and Borrower.

"Investment Mortgages" means mortgages securing indebtedness directly or indirectly owed to Borrower or any of its Subsidiaries, including certificates of interest in real estate mortgage investment conduits.

"Issuing Lender" means Wells Fargo in its capacity as issuer of Letters of Credit under this Agreement, and shall include any successor Issuing Lender appointed pursuant hereto.

"IRS" means the Internal Revenue Service and any Person succeeding to the functions thereof.

"Land" means unimproved real estate purchased or leased or to be purchased or leased by Borrower or any of its Subsidiaries for the purpose of future development of improvements.

"Lender Affiliate" as applied to any Lender, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Lender. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means (a) the possession, directly or indirectly, of the power to vote more than fifty percent (50%) of the Securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise, or (b) the ownership of a general partnership interest or a limited partnership interest representing more than fifty (50%) of the outstanding limited partnership interests of a Person.

"Lender Reply Period" has the meaning ascribed to such term in Section 11.10(a).

"Lender Taxes" has the meaning ascribed to such term in Section 2.03(g).

"Lenders" means Wells Fargo and any other bank, finance company, insurance or other financial institution which is or becomes a party to this Agreement by execution of a counterpart signature page hereto or an Assignment and Assumption, as assignee, provided that with respect to matters requiring the consent to or approval of Requisite Lenders, the Supermajority Lenders, or all Lenders at any given time, all then existing Defaulting Lenders

will be disregarded and excluded, and, for voting purposes only, "all Lenders" shall be deemed to mean "all Lenders other than Defaulting Lenders."

"Letter of Credit Application" shall have the meaning ascribed to such term in Section 2.09(b).

"Letter of Credit Documents" has the meaning set forth in Section 2.09(j) hereof.

"Letter of Credit Mandatory Borrowing" has the meaning set forth in Section 2.09(f) hereof.

"Letter of Credit Note" means the promissory note evidencing the Letter of Credit Obligations in the original principal amount of Thirty Million Dollars (\$30,000,000) executed by Borrower in favor of Issuing Lender pursuant to the Existing Credit Agreement, as it may be amended, supplemented, replaced or modified from time to time. A copy of the Letter of Credit Note is attached hereto as Exhibit G.

"Letter of Credit Obligations" means, collectively and without duplication, (a) all reimbursement and other obligations of Borrower in respect of Letters of Credit, and (b) all amounts paid by Lenders to Issuing Lender in respect of Letters of Credit.

"Letters of Credit" means the letters of credit issued by Issuing Lender pursuant to Section 2.09 hereof for the account of Borrower in an aggregate face amount not to exceed \$30,000,000.00 outstanding at any one time, as they may be drawn on, replaced or modified from time to time.

"Level I Period" means a period during which the ratio of Total Liabilities to the sum of Gross Asset Values for the Borrower and each of its Subsidiaries shall be equal to or less than 0.45:1.

"Level II Period" means a period during which the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries shall exceed 0.45:1 but shall not exceed 0.60:1.

"Liabilities and Costs" means all claims, judgments, liabilities, obligations, responsibilities, losses, damages (including punitive and treble damages), costs, disbursements and expenses (including without limitation reasonable attorneys', experts' and consulting fees and costs of investigation and feasibility studies), fines, penalties and monetary sanctions, interest, direct or indirect, known or unknown, absolute or contingent, past, present or future.

"LIBOR" means, relative to any Interest Period for any LIBOR Loan included in any Borrowing, the rate of interest obtained by dividing (i) the rate of interest determined by Agent (whose determination shall be conclusive absent manifest error, which shall not include any lower determination by any other banks) equal to the rate (rounded upwards, if necessary, to the nearest one one-hundredth of one percent (.01%)) per annum reported by Wells Fargo at which Dollar deposits in immediately available funds are offered by Wells Fargo to leading banks in the Eurodollar inter bank market at or about 11:00 A.M. London time two (2) Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount equal or

comparable to the LIBOR Loan to which such Interest Period relates, by (ii) a percentage expressed as a decimal equal to one (1) minus the LIBOR Reserve Percentage.

"LIBOR Loan" means a Loan bearing interest, at all times during an Interest Period applicable to such Loan, at a fixed rate of interest determined by reference to LIBOR.

"LIBOR Reserve Percentage" means, relative to any Interest Period, the average daily maximum reserve requirement (including, without limitation, all basic, emergency, supplemental, marginal and other reserves) which is imposed under Regulation D, as Regulation D may be amended, modified or supplemented, on "Eurocurrency liabilities" having a term equal to the applicable Interest Period (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of any bank to United States residents), which requirement shall be expressed as a decimal. LIBOR shall be adjusted automatically on, and as of the effective date of, any change in the LIBOR Reserve Percentage.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights-of-way, zoning restrictions and the like), lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including without limitation any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement (other than a financing statement filed by a "true" lessor pursuant to Section 9-408 of the Uniform Commercial Code) naming the owner of the asset to which such Lien relates as debtor, under the Uniform Commercial Code or other comparable law of any jurisdiction.

"Loans" means the loans made pursuant to the Facility, including, without limitation, loans made pursuant to Section 2.01 hereof, Swingline Loans, and Loans made pursuant to Mandatory Borrowings.

"Loan Availability" means the amount of the Facility from time to time.

"Loan Documents" means, this Agreement, the Loan Notes, the REIT Guaranty, and all other agreements, instruments and documents (together with amendments and supplements thereto and replacements thereof) now or hereafter executed by the REIT, Borrower or any Agreement Party, which evidence, guaranty or secure the Obligations.

"Loan Notes" means the promissory notes evidencing the Loans (other than Swingline Loans) in the aggregate original principal amount of One Hundred Fifty Million Dollars (\$150,000,000) executed by Borrower in favor of Lenders pursuant to the Existing Credit Agreement, as they may be amended, supplemented, replaced or modified from time to time. Copies of the Loan Notes are attached hereto as Exhibit D.

"Mandatory Borrowing" means any Letter of Credit Mandatory Borrowing or Swingline Mandatory Borrowing.

"Manufactured Home Community Mortgages" means Investment Mortgages issued by any Person engaged primarily in the business of developing, owning, and managing manufactured home communities.

"Manufactured Home Community Ownership Interests" means partnership, joint venture, membership or other equity interests issued by any Person engaged primarily in the business of developing, owning, and managing manufactured home communities.

"Material Adverse Effect" means a material adverse effect upon (i) the ability of Borrower or the REIT to perform its covenants and obligations under this Agreement and the other Loan Documents or (ii) the ability of Agent or Lenders to enforce the Loan Documents. The phrase "has a Material Adverse Effect" or "will result in a Material Adverse Effect" or words substantially similar thereto shall in all cases be intended to mean "has or will result in a Material Adverse Effect," and the phrase "has no (or does not have a) Material Adverse Effect" or "will not result in a Material Adverse Effect" or words substantially similar thereto shall in all cases be intended to mean "does not or will not result in a Material Adverse Effect."

"Maturity Date" means the Initial Maturity Date, as such date may be extended pursuant to Article III.

"Minimum Net Worth" means Three Hundred Fifty-Eight Million Dollars (\$358,000,000), plus ninety percent (90%) of all Net Offering Proceeds received by the REIT or Borrower after the Closing Date, minus ninety percent (90%) of the aggregate cost to the REIT or Borrower for the repurchase of any common stock, preferred stock, partnership interests, limited liability company interests, Convertible Securities or other ownership or equity interests in the REIT or Borrower; provided, however, that in no event shall the Minimum Net Worth be less than Three Hundred Twenty Two Million Dollars (\$322,000,000).

"Moody's" means Moody's Investors Service, a Delaware corporation, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by Agent.

"Multiemployer Plan" means an employee benefit plan defined in Section 4001(a)(3) or Section 3(37) of ERISA which is, or within the immediately preceding six (6) years was, maintained, administered, contributed to by or was required to be contributed to by a Person or any ERISA Affiliate, or under which a Person or any ERISA Affiliate may incur any liability.

"Net Income" means, for any period, the net income (or loss) after Taxes of the REIT, on a consolidated basis, for such period calculated in conformity with GAAP; provided, however, that Net Income shall not include the net income (or loss) of Investment Affiliates.

"Net Offering Proceeds" means all cash or other assets received by the REIT or Borrower as a result of the sale of common stock, preferred stock, partnership interests, limited liability company interests, Convertible Securities or other ownership or equity interests in the REIT or Borrower less customary costs and discounts of issuance paid by the REIT or Borrower, as the case may be.



"Net Operating Income" means, for any period, and with respect to any Qualifying Unencumbered Property, the net operating income of such Qualifying Unencumbered Property (attributed to such Property in a manner reasonably acceptable to Agent) for such period (i) determined in accordance with GAAP, (ii) determined in a manner which is consistent with the past practices of the REIT and Borrower, and (iii) inclusive of an allocation of reasonable management fees and administrative costs to such Qualifying Unencumbered Property consistent with the past practices of the REIT and Borrower, except that, for purposes of determining Net Operating Income, income shall not (a) include security or other deposits, lease termination or other similar charges, delinquent rent recoveries, unless previously reflected in reserves, or any other items reasonably deemed by Agent to be of a non-recurring nature or (b) be reduced by depreciation or amortization or any other non-cash item.

"Net Price" means, with respect to the purchase of any Property by Borrower or any Subsidiary, without duplication, (i) cash and Cash Equivalents paid as consideration for such purchase, plus (ii) the principal amount of any note or other deferred payment obligation delivered in connection with such purchase (except as described in clause (iv) below), plus (iii) the value of any other consideration delivered in connection with such purchase or sale (including, without limitation, shares in the REIT and operating partnership units or preferred operating partnership units in Borrower) (as reasonably determined by Agent), minus (iv) the value of any consideration deposited into escrow or subject to disbursement or claim upon the occurrence of any event, minus (v) reasonable costs of sale and taxes paid or payable in connection with such purchase.

"Net Worth" means, at any time, the tangible net worth of the REIT determined in accordance with GAAP, on a consolidated basis, not including depreciation and amortization expense of the REIT since September 30, 2001 and not including the REIT's share of depreciation and amortization expense of Investment Affiliates since September 30, 2001.

"New Lender" shall have the meaning set forth in Section 11.13(k) hereof.

"Non-Manufactured Home Community Property" means Property which is not (i) used for lease or operation of manufactured home communities, (ii) Land, (iii) Securities consisting of stock issued by real estate investment trusts engaged primarily in the development, ownership and management of manufactured home communities, (iv) Manufactured Home Community Mortgages, (v) Manufactured Home Community Ownership Interests or (vi) Taxable REIT Subsidiary Interests.

"Non Pro Rata Loan" means a Loan (other than a Swingline Loan but including a Mandatory Borrowing) or Letter of Credit draw with respect to which less than all Lenders have funded their respective Pro Rata Shares of such Loans or Letter of Credit draws (whether by making Loans or purchasing participation interests in accordance with the terms hereof) and the failure of the non-funding Lender or Lenders to fund its or their respective Pro Rata Shares of such Loan or Letter of Credit draw constitutes a breach of this Agreement.

"Non-Recourse Indebtedness" means any single loan with respect to which recourse for payment is limited to specific assets related to a particular Property or group of Properties encumbered by a Lien securing such Indebtedness, so long as the Adjusted Asset Value for such Property, or the total of the Adjusted Asset Values for such group of Properties,

does not exceed One Hundred Million Dollars (\$100,000,000); provided, however, that personal recourse to the REIT, Borrower or any Subsidiary by a holder of any such loan for fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financing of real estate shall not, by itself, prevent such loan from being characterized as Non-Recourse Indebtedness.

"Notice of Borrowing" means, with respect to a proposed Borrowing pursuant to Section 2.01(b) or Section 2.10, a notice of borrowing duly executed by an authorized officer of Borrower substantially in the form of Exhibit I.

"Notice of Continuation/Conversion" means a notice of continuation or conversion of or to a LIBOR Loan duly executed by an authorized officer of Borrower substantially in the form of Exhibit J.

"Obligations" means, from time to time, all Indebtedness of Borrower owing to Agent, Swingline Lender, Issuing Lender, any Lender, or any Person entitled to indemnification pursuant to Section 12.02, or any of their respective successors, transferees or assigns, of every type and description, whether or not evidenced by any note, guaranty or other instrument, arising under or in connection with this Agreement or any other Loan Document, whether or not for the payment of money, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired. The term includes, without limitation, all interest, charges, expenses, fees, reasonable attorneys' fees and disbursements and any other sum now or hereafter chargeable to Borrower under or in connection with this Agreement or any other Loan Document. Notwithstanding anything to the contrary contained in this definition, Obligations shall not be deemed to include any obligations or liabilities of Borrower to Agent or any Lender under an Interest Rate Contract, foreign currency exchange agreement or other Contractual Obligation unless the same is among Borrower and all Lenders. Obligations shall also not include the "Obligations" under the Term Loan Credit Agreement.

"Officer's Certificate" means a certificate signed by a specified officer of a Person certifying as to the matters set forth therein.

"Other Indebtedness" means all Indebtedness other than the Obligations.

"Original Credit Agreement" has the meaning set forth in the Recitals hereto.

"Original Obligations" means the "Obligations" as defined in the Existing Credit Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any Person succeeding to the functions thereof.

"Permit" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"Permitted Holdings" means any of the holdings and activities described in Section 9.08, but only to the extent permitted in Section 9.08.

"Permitted Liens" means:

(a) Liens for Taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with Sections 7.01(d) or 7.02(g);

(b) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than sixty (60) days delinquent or which are being contested in good faith in accordance with Sections 7.01(d) or 7.02(g);

(c) deposits made in the ordinary course of business to secure liabilities to insurance carriers;

(d) Liens for purchase money obligations for equipment; provided that (i) the Indebtedness secured by any such Lien does not exceed the purchase price of such equipment, (ii) any such Lien encumbers only the asset so purchased and the proceeds upon sale, disposition, loss or destruction thereof, and (iii) such Lien, after giving effect to the Indebtedness secured thereby, does not give rise to an Event of Default or Unmatured Event of Default pursuant to Section 8.01(a);

(e) easements, rights-of-way, zoning restrictions, other similar charges or encumbrances and all other items listed on Schedule B to Borrower's or any Subsidiary's, as applicable, owner's title insurance policies for any of Borrower's or any Subsidiary's real Properties, so long as the foregoing do not interfere in any material respect with the use or ordinary conduct of the business of Borrower or such Subsidiary, as applicable, and do not diminish in any material respect the value of the Property to which it is attached or for which it is listed; or

(f) Liens and judgments which have been or will be bonded or released of record within thirty (30) days after the date such Lien or judgment is entered or filed against the REIT, Borrower, any Subsidiary or any Agreement Party.

"Person" means any natural person, employee, corporation, limited partnership, limited liability partnership, general partnership, joint stock company, limited liability company, joint venture, association, company, trust, bank, trust company, land trust, business trust, real estate investment trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

"Plan" means an employee benefit plan defined in Section 3(3) of ERISA (other than a Multiemployer Plan) in respect of which a Person or an ERISA Affiliate, as applicable, is an "employer" as defined in Section 3(5) of ERISA.

"Pre-Closing Financials" has the meaning ascribed to such term in Section 5.01(g).

"Pro Rata Share" means, with respect to any Lender, a fraction (expressed as a percentage), the numerator of which shall be the amount of such Lender's Commitment and the

denominator of which shall be the aggregate amount of all of the Lenders' Commitments, as adjusted from time to time in accordance with the provisions of this Agreement.

"Property" means, with respect to any Person, any real or personal property, building, facility, structure, equipment or unit, or other asset owned by such Person.

"Qualifying Unencumbered Property" means (a) the Properties listed on Exhibit F hereto and (b) any Property designated by Borrower from time to time pursuant to Section 6.04 which (i) is an operating manufactured home community property wholly-owned (directly or beneficially) by Borrower or any Subsidiary wholly-owned, directly or indirectly by Borrower and/or the REIT, (ii) is not subject (nor are any direct or indirect equity interests in such Property subject) to a Lien which secures Indebtedness of any Person other than a Permitted Lien, (iii) is not subject (nor are any direct or indirect equity interests in such Property subject) to any covenant, condition, or other restriction which prohibits or limits the creation or assumption of any Lien upon such Property (except as set forth in the Term Loan Credit Agreement), and (iv) has not been designated by Agent in a notice to Borrower as not acceptable to the Requisite Lenders pursuant to Section 6.04; provided, however, that the weighted average occupancy rate of the Properties listed on Exhibit F together with those designated by Borrower to be Qualifying Unencumbered Properties pursuant to Section 6.04 (excluding expansion areas of such Properties which are purchased and/or developed on or after the Closing Date) shall be at least eighty-five percent (85%); and provided, further, that Borrower may, upon at least fifteen (15) Business Days prior notice to Agent, designate that any Property listed on Exhibit F or otherwise designated as a Qualifying Unencumbered Property is no longer a Qualifying Unencumbered Property (and upon such designation, such Property shall no longer be a Qualifying Unencumbered Property).

"Recourse Indebtedness" means, with respect to any Person, Indebtedness which is not Non-Recourse Indebtedness.

"Regulation D" means Regulation D of the Federal Reserve Board as in effect from time to time.

"Regulation T" means Regulation T of the Federal Reserve Board as in effect from time to time.

"Regulation U" means Regulation U of the Federal Reserve Board as in effect from time to time.

"Regulation X" means Regulation X of the Federal Reserve Board as in effect from time to time.

"REIT" has the meaning ascribed to such term in the preamble hereto.

"REIT Guaranty" means the Amended and Restated REIT Guaranty dated as of April 28, 1998 executed by the REIT in favor of Agent and the Lenders. A copy of the REIT Guaranty is attached hereto as Exhibit B.

"Release" may be either a noun or a verb and means the release, spill, emission, leaking, pumping, pouring, emitting, emptying, escaping, dumping, injection, deposit, disposal,

discharge, dispersal, leaching or migration into the indoor or outdoor environment or into or out of any property, including the movement of Contaminants through or in the air, soil, surface water, groundwater or property.

"Remedial Action" means any action undertaken pursuant to Environmental Laws to (a) clean up, remove, remedy, respond to, treat or in any other way address Contaminants in the indoor or outdoor environment; (b) prevent the Release or threat of Release or minimize the further Release of Contaminants so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"Reportable Event" means any of the events described in Section 4043(b) of ERISA, other than an event for which the thirty (30) day notice requirement is waived by regulations, or any of the events described in Section 4062(f) or 4063(a) of ERISA.

"Requirements of Law" means, as to any Person, the charter and by-laws, partnership agreements or other organizational or governing documents of such Person, and any law, rule or regulation, permit, or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including without limitation, the Securities Act, the Securities Exchange Act, Regulations T, U and X, FIRREA and any certificate of occupancy, zoning ordinance, building or land use requirement or Permit or occupational safety or health law, rule or regulation.

"Requisite Lenders" means, collectively, Lenders whose Pro Rata Shares, in the aggregate, are at least sixty-six and two-thirds percent (66 2/3%); provided, however, that, in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded and the Pro Rata Shares of Lenders shall be redetermined, for voting purposes only, to exclude the Pro Rata Shares of such Defaulting Lenders; and provided, further, that so long as there are at least two (2) Lenders who are not Defaulting Lenders, the Requisite Lenders must be comprised of a minimum of two (2) Lenders; and provided, further, that for purposes of any amendment, modification or waiver of the requirements of Article IX, the Requisite lenders must include Agent in its capacity as a Lender (provided Agent is not a defaulting Lender).

"S&P" means Standard & Poor's Rating Group, a division of McGraw Hill, its successors and assigns, and, if Standard & Poor's Rating Group shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by Agent.

"Second Amendment" has the meaning set forth in the Recitals hereto.

"Second Extended Maturity Date" has the meaning set forth in Section 3.02.

"Secretary's Certificate" has the meaning ascribed to such term in Section 4.01(c)(i).

"Secured Debt" means Indebtedness, the payment of which is secured by a Lien on any real Property owned or leased by the REIT, Borrower, or any Subsidiary.

"Securities" means any stock, partnership interests, shares, shares of beneficial interest, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities," or any certificates of interest, shares, or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing, but shall not include any evidence of the Obligations.

"Securities Act" means the Securities Act of 1933, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Senior Loans" has the meaning ascribed to such term in Section 11.04(b).

"Sole Lead Arranger" means Wells Fargo Bank, N.A. in its capacity as sole lead arranger for the Lenders under this Agreement.

"Solvent" means as to any Person at the time of determination, such Person (a) owns property the value of which (both at fair valuation and at present fair saleable value) is greater than the amount required to pay all of such Person's liabilities (including contingent liabilities and debts); (b) is able to pay all of its debts as such debts mature; and (c) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage.

"Subsidiary" means any Person, whose financial results are consolidated under GAAP with the financial results of the REIT or Borrower on the consolidated financial statements of the REIT or Borrower.

"Supermajority Lenders" means, collectively, Lenders whose Pro Rata Shares, in the aggregate, are at least eighty-five percent (85%), provided, however, that, in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded and the Pro Rata Shares of Lenders shall be redetermined, for voting purposes only, to exclude the Pro Rata Shares of such Defaulting Lenders; and provided, further, that, so long as there are at least two (2) Lenders who are not Defaulting Lenders, the Supermajority Lenders must be comprised of a minimum of two (2) Lenders; and provided, further, that for purposes of any amendment, modification or waiver of the requirements of Article IX, the Supermajority Lenders must include Agent in its capacity as a Lender (provided Agent is not a Defaulting Lender).

"Swingline Mandatory Borrowing" has the meaning set forth in Section 2.10(b)(iv) hereof.

"Swingline Lender" means Wells Fargo in its capacity as Swingline Lender hereunder, and shall include any successor Swingline Lender appointed pursuant hereto.

"Swingline Loan" means a Loan made by the Swingline Lender pursuant to Section 2.10 hereof.

"Swingline Note" means the promissory note evidencing the Swingline Loans in the original principal amount of Thirty Million Dollars (\$30,000,000) executed by Borrower in favor of Swingline Lender pursuant to the Existing Credit Agreement, as it may be amended, supplemented, replaced or modified from time to time. A copy of the Swingline Note is attached hereto as Exhibit E.

"Syndication Agent" means Bank of America, N.A. in its capacity as syndication agent for the Lenders under this Agreement.

"Taxable REIT Subsidiary Interests" means equity interests in Subsidiaries not engaged in the development, ownership or operation or real estate and permitted to be held by Borrower and the REIT pursuant to Section 856(l) of the Internal Revenue Code (as amended from time to time) without violating the REIT's status as a real estate investment trust.

"Taxes" means all federal, state, local and foreign income and gross receipts taxes.

"Term Loan Credit Agreement" means that certain Term Loan Credit Agreement dated as of February \_\_, 2002 by and among Borrower, the REIT, Wells Fargo, as Agent, and the lenders named therein (as the same may be amended, modified, supplemented or amended and restated from time to time).

"Termination Date" has the meaning ascribed to such term in Section 2.01(d).

"Termination Event" means (a) any Reportable Event, (b) the withdrawal of a Person, or an ERISA Affiliate from a Benefit Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the occurrence of an obligation arising under Section 4041 of ERISA of a Person or an ERISA Affiliate to provide affected parties with a written notice of an intent to terminate a Benefit Plan in a distress termination described in Section 4041(c) of ERISA, (d) the institution by the PBGC of proceedings to terminate any Benefit Plan under Section 4042 of ERISA or to appoint a trustee to administer any Benefit Plan, (e) any event or condition which constitutes grounds under Section 4042 of ERISA for the appointment of a trustee to administer a Benefit Plan, (f) the partial or complete withdrawal of such Person or any ERISA Affiliate from a Multiemployer Plan which would have a Material Adverse Effect, or (g) the adoption of an amendment by any Person or any ERISA Affiliate to terminate any Benefit Plan which is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code or the treatment of an amendment to a Benefit Plan as a termination under ERISA.

"Total Liabilities" means, without duplication, all Indebtedness of the REIT on a consolidated basis, plus all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of the REIT, on a consolidated basis, and in any event shall include recourse and non-recourse mortgage debt, letters of credit, purchase obligations, forward equity sales, repurchase obligations, unsecured debt, accounts payable, lease obligations (including ground leases) to the extent required, in accordance with GAAP, to be classified as capital leases on the balance sheet of the REIT, guarantees of indebtedness, subordinated debt and unfunded obligations; provided, however, that "Total Liabilities" shall not

include dividends declared by the REIT or Borrower which are permitted under Section 8.01(d) but not yet paid.

"Unencumbered Asset Value" means, as of any date of determination, (i) a fraction, the numerator of which is the product of four (4) and the Net Operating Income for the most recently ended Fiscal Quarter which is attributable (in a manner reasonably acceptable to Agent) to Qualifying Unencumbered Properties wholly-owned (directly or beneficially) by Borrower or any Subsidiary wholly-owned, directly or indirectly, by Borrower and/or the REIT, for the entire Fiscal Quarter and the denominator of which is eight hundred seventy-five ten-thousandths (0.0875) plus (ii) the aggregate of the Net Prices paid by Borrower or such Subsidiary for all Qualifying Unencumbered Properties which have been acquired in the Fiscal Quarter most recently ended.

"Unencumbered Net Operating Income" means for any Fiscal Quarter, Net Operating Income for such period from each Qualifying Unencumbered Property.

"Unfunded Pension Liabilities" means the excess of a Benefit Plan's accrued benefits, as defined in Section 3(23) of ERISA, over the current value of that Plan's assets, as defined in Section 3(26) of ERISA.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect on the date hereof in the State of Illinois.

"Unmatured Event of Default" means an event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default.

"Unsecured Debt" means, as of any date of determination and without duplication, all Indebtedness of the REIT, Borrower or any Subsidiary, which is not Secured Debt plus all accounts payable of the REIT, Borrower or any Subsidiary incurred in the ordinary course of business, the payment of which is not secured by a Lien on any property owned or leased by the REIT, Borrower or any Subsidiary.

"Unsecured Interest Expense" means Interest Expense other than Interest Expense payable in respect of Secured Debt.

"Unused Amount" has the meaning ascribed to such term in Section 2.04(a).

"Unused Facility Fee" has the meaning ascribed to such term in Section 2.04(b).

"Welfare Plan" means any "employee welfare benefit plan" as defined in Section 3(1) of ERISA, which a Person or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or within the immediately preceding five years maintained, administered, contributed to or was required to contribute to, or under which a Person or any ERISA Affiliate may incur any liability.

"Wells Fargo" has the meaning ascribed to such term in the preamble hereto.

"Wholly-Owned Subsidiary" means any Subsidiary which is wholly-owned directly or indirectly by Borrower or the REIT.



"WFRAP" has the meaning set forth in the Recitals hereto.

Computation of Time Periods. In this Agreement, unless otherwise specified, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to and including." Periods of days referred to in this Agreement shall be counted in calendar days unless Business Days are expressly prescribed.

#### 1.03 Terms.

(a) Any accounting terms used in this Agreement which are not specifically defined shall have the meanings customarily given them in accordance with GAAP, provided that for purposes of references to the financial results of the "REIT, on a consolidated basis," the REIT shall be deemed to own one hundred percent (100%) of the partnership interests in Borrower.

(b) Any time the phrase "to the best of Borrower's knowledge" or a phrase similar thereto is used herein, it means: "to the actual knowledge of the executive officers of Borrower and the REIT, after reasonable inquiry of those agents, employees or contractors of the REIT, Borrower, any Agreement Party or any Subsidiary who could reasonably be anticipated to have knowledge with respect to the subject matter or circumstances in question and review of those documents or instruments which could reasonably be anticipated to be relevant to the subject matter or circumstances in question."

(c) In each case where the consent or approval of Agent, Requisite Lenders, Supermajority Lenders or all Lenders is required or their non-obligatory action is requested by Borrower, such consent, approval or action shall be in the sole and absolute discretion of Agent and, as applicable, each Lender, unless otherwise specifically indicated.

Interrelationship With the Existing Credit Agreement. Effective on the Closing Date, this Agreement shall amend and restate the provisions of the Existing Credit Agreement (as amended by the First Amendment and the Second Amendment) in their entirety, and all Existing Loans and all Loans made on or after the Closing Date shall be governed exclusively by the terms of this Agreement. All Original Obligations outstanding on the Closing Date (including without limitation all accrued and unpaid interest and fees) shall, to the extent not paid on the Closing Date, be deemed to be Obligations outstanding hereunder. The REIT Guaranty shall remain in full force and effect with respect to the Obligations and is hereby reaffirmed. The Loan Notes shall continue to evidence the Loans (other than Swingline Loans) and are hereby reaffirmed. The Swingline Note shall continue to evidence the Swingline Loans and is hereby reaffirmed. The parties acknowledge and agree that the execution and delivery of this Agreement shall not constitute a novation, payment and reborrowing or termination of the Original Obligations and that all such Original Obligations outstanding on the Closing Date are in all respects continued and outstanding as Obligations under this Agreement.

## ARTICLE II.

### LOANS

#### 2.01 Loan Advances and Repayment.

(a) Loan Availability.

(i) Subject to the terms and conditions set forth in this Agreement, Lenders hereby agree to make Loans (other than Swingline Loans) to Borrower from time to time during the period from the Closing Date to the first Business Day preceding the Maturity Date; provided, that the sum of the aggregate principal amount of all outstanding Loans (including Swingline Loans) plus the aggregate face amount of all outstanding Letters of Credit shall not exceed Loan Availability; and provided, further, that if a Base Rate Loan is being made pursuant to Section 2.09(e) hereof to reimburse Issuing Lender for a drawn Letter of Credit, to avoid a duplicative reduction in the amount of Loan Availability, the drawn Letter of Credit shall not be considered outstanding. All Loans (other than Swingline Loans) under this Agreement shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any failure by any other Lender to perform its obligation to make a Loan hereunder and that the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make a Loan. The Loans (other than Swingline Loans) will be evidenced by the Loan Notes. The Swingline Loans will be evidenced by the Swingline Note.

(ii) Loans (including, without limitation, Swingline Loans) may be voluntarily prepaid pursuant to Section 2.05(a) and, subject to the provisions of this Agreement (including, without limitation, the provisions of Section 2.11 hereof), any amounts so prepaid may be reborrowed, up to the amount available under Section 2.01(a)(i) at the time of such Borrowing, until the Business Day next preceding the Termination Date. The principal balance of the Loans shall be payable in full on the Termination Date. During the term of this Agreement and prior to the termination of the Commitments, Borrower shall pay to Agent, within one (1) Business Day after Borrower's receipt of a demand in writing from Agent for the benefit of Lenders, such principal amounts as are necessary so that the sum of the aggregate principal amounts of all outstanding Loans (including Swingline Loans) plus the aggregate face amount of all outstanding Letters of Credit at any time does not exceed Loan Availability at such time.

(b) Notice of Borrowing. Whenever Borrower desires to borrow under this Section 2.01, Borrower shall give Agent, at Wells Fargo Real Estate Group Disbursement Center, 2120 East Park Place, Suite 100, El Segundo, California 90245, with a copy to: Wells Fargo Bank, N.A., 225 West Wacker Drive, Suite 2550, Chicago, Illinois 60606, Attn: Account Officer, or such other address as Agent shall designate, an original or facsimile Notice of Borrowing no later than 10:00 A.M. (California time), not less than three (3) nor more than five (5) Business Days prior to the proposed Funding Date of each Loan. Each Notice of Borrowing shall specify (i) the Funding Date (which shall be a Business Day) in respect of the Loan, (ii) the amount of the proposed Loan, provided that the aggregate amount of such proposed Loan shall equal (A) in the case of Base Rate Loans, One Million Dollars (\$1,000,000) or integral multiples of One Hundred Thousand Dollars (\$100,000) in excess thereof, or (B) in the case of LIBOR Loans, One Million Dollars (\$1,000,000) or integral multiples of One Hundred Thousand Dollars (\$100,000) in excess thereof, and (iii) whether the Loan to be made thereunder will be a Base

Rate Loan or a LIBOR Loan and, if a LIBOR Loan, the Interest Period. Any Notice of Borrowing pursuant to this Section 2.01(b) shall be irrevocable. Each such Notice of Borrowing shall be accompanied by all reports or documents required to be delivered by Borrower to Agent or any Lender under this Agreement. Borrower may elect (A) so long as no Event of Default has occurred and is continuing, to convert Base Rate Loans or any portion thereof into LIBOR Loans, (B) to convert LIBOR Loans or any portion thereof into Base Rate Loans, or (C) so long as no Event of Default has occurred and is continuing, to continue any LIBOR Loans or any portion thereof for an additional Interest Period, provided, however, that the aggregate amount of Loans being continued as or converted into LIBOR Loans shall, in the aggregate, equal One Million Dollars (\$1,000,000) or an integral multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof. The applicable Interest Period for the continuation of any LIBOR Loan shall commence on the day on which the next preceding Interest Period expires. Each such election shall be made by giving Agent, at 2120 E. Park Place, Suite 100, El Segundo, California 90245, Attn: Jean Randall-Hall, a Notice of Continuation/Conversion by 10:00 A.M. (California time) on the date of a conversion to a Base Rate Loan, or by 10:00 A.M. (California time) not less than three (3) nor more than five (5) Business Days prior to the date of a conversion to or continuation of a LIBOR Loan, specifying, in each case (1) whether a conversion or continuation is to occur, (2) the amount of the conversion or continuation, (3) the Interest Period therefor, in the case of a conversion to or continuation of a LIBOR Loan, and (4) the date of the conversion or continuation (which date shall be a Business Day). Agent shall promptly notify each Lender, but in any event within one (1) Business Day after receipt of such notice, of its receipt of each such notice and the contents thereof. Notwithstanding anything to the contrary contained herein and subject to the default interest provisions contained in Section 2.03, if an Event of Default occurs and as a result thereof the Commitments are terminated, all LIBOR Loans will convert to Base Rate Loans upon the expiration of the applicable Interest Periods therefor or the date all Loans become due, whichever occurs first. Except as provided above, the conversion of a LIBOR Loan to a Base Rate Loan shall only occur on the last Business Day of the Interest Period relating to such LIBOR Loan. In the absence of an effective election by Borrower of a LIBOR Loan and Interest Period in accordance with the above procedures prior to the third (3rd) Business Day prior to the expiration of the then current Interest Period with respect to any LIBOR Loan, interest on such LIBOR Loan shall accrue at the interest rate then applicable to a LIBOR Loan for an Interest Period of thirty (30) days, effective immediately upon the expiration of the then-current Interest Period, without prejudice, however, to the right of Borrower to elect a Base Rate Loan or a different Interest Period in accordance with the terms and provisions of this Agreement; provided, however, that if such continuation shall cause the number of LIBOR Loan tranches to exceed six (6), such LIBOR Loan shall be converted to a Base Rate Loan.

(c) Making of Loans. Subject to Section 11.03, Agent shall make the proceeds of Loans (other than Swingline Loans) available to Borrower in El Segundo, California on such Funding Date and shall disburse such funds in Dollars and in immediately available funds not later than 1:00 P.M. Chicago time to Borrower's account, at Bank of America, Account Number 73-66901095 in Chicago, Illinois, or such other account specified in the Notice of Borrowing acceptable to Agent, with a confirming telephone call to Quantaze Watts at (312) 279-1408 or Mark Howell at (312) 279-1402.

(d) Term; Principal Payment. The outstanding balance of the Loans (other than Swingline Loans, which by their terms shall mature earlier) shall be payable in full on the

earlier to occur of (A) the Maturity Date, and (B) the acceleration of the Loans pursuant to Section 10.02(a) (the "Termination Date").

Authorization to Obtain Loans and Letters of Credit. Borrower shall provide Agent with documentation reasonably satisfactory to Agent indicating the names of those employees or agents of Borrower authorized by Borrower to sign Notices of Borrowing, to request Letters of Credit and to receive callback confirmations, and Agent and Lenders shall be entitled to rely on such documentation until notified in writing by Borrower of any change(s) of the persons so authorized. Agent, Swingline Lender and Issuing Lender shall be entitled to act in good faith on the instructions of anyone identifying himself as one of the Persons authorized to request Loans or Letters of Credit, and Borrower shall be bound thereby in the same manner as if such Person were actually so authorized. Borrower agrees to indemnify, defend and hold Lenders, Agent, Swingline Lender and Issuing Lender harmless from and against any and all Liabilities and Costs which may arise or be created by the acceptance of instructions for making Loans, and issuing Letters of Credit.

### 2.03 Interest on the Loans

(a) Base Rate Loans. Subject to Section 2.03(d), all Base Rate Loans shall bear interest on the average daily unpaid principal amount thereof from the date made until paid in full at a fluctuating rate per annum equal to the Base Rate. Base Rate Loans shall be made in minimum amounts of One Million Dollars (\$1,000,000) or an integral multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof.

(b) LIBOR Loans. Subject to Section 2.03(d), all LIBOR Loans shall bear interest on the unpaid principal amount thereof during the Interest Period applicable thereto at a rate per annum equal to the sum of LIBOR for such Interest Period plus the Applicable Margin. Upon receipt of a Notice of Borrowing requesting LIBOR Loans, Agent shall determine LIBOR applicable to the Interest Period for such LIBOR Loans, and shall give notice thereof to Borrower and Lenders; provided, however, that failure to give such notice shall not affect the validity of such rate. Each determination by Agent of LIBOR shall be conclusive and binding upon the parties hereto in the absence of demonstrable error. LIBOR Loans shall be in tranches of One Million Dollars (\$1,000,000) or One Hundred Thousand Dollars (\$100,000) increments in excess thereof. No more than six (6) LIBOR Loan tranches shall be outstanding at any one time.

(c) Interest Payments. Subject to Section 2.03(d), interest accrued on all Loans shall be payable by Borrower in arrears on the first Business Day of the first calendar month following the Closing Date, and the first Business Day of each succeeding calendar month thereafter, and on the Termination Date.

(d) Default Interest. Notwithstanding the rates of interest specified in Sections 2.03(a) and 2.03(b) and the payment dates specified in Section 2.03(c), effective immediately upon demand by Agent after the occurrence of an Event of Default and during the continuance of any Event of Default, the principal balance of all Loans then outstanding and, to the extent permitted by applicable law, any interest payments on the Loans not paid when due shall bear interest payable upon demand at a rate which is five percent (5%) per annum in excess of the rate or rates of interest otherwise payable under this Agreement. All other amounts due

Agent, Swingline Lender, Issuing Lender or Lenders (whether directly or for reimbursement) under this Agreement or any of the other Loan Documents if not paid when due, or if no time period is expressed, if not paid within fifteen (15) days after written demand to Borrower, shall bear interest from and after demand at the rate which is five percent (5%) per annum in excess of the lowest rate or rates of interest otherwise payable under this Agreement, or, if no Loans are then outstanding, at the rate which is five percent (5%) per annum in excess of the rate of interest applicable to Base Rate Loans.

(e) Late Fee. Borrower acknowledges that late payment hereunder will cause Agent, Swingline Lender, Issuing Lender and Lenders to incur costs not contemplated by this Agreement. Such costs include without limitation processing and accounting charges. Therefore, if Borrower fails timely to pay any sum due and payable hereunder through the Termination Date (other than payments of principal), unless waived by Agent pursuant to Section 12.05(e), a late charge of four cents (\$.04) for each dollar of any interest payment due hereon and which is not paid within ten (10) days after such payment is due or of any other amount due hereon (other than payments of principal) and which is not paid within thirty (30) days after such payment is due, shall be charged by Agent (for the benefit of Swingline Lender, Issuing Lender and Lenders, as applicable) and paid by Borrower for the purpose of defraying the expense incident to handling such delinquent payment; provided, however, that no late charges shall be assessed with respect to any amount for which Borrower is obligated to pay interest at the rate specified in Section 2.03(d), provided, further, that in no event shall Agent, Swingline Lender, Issuing Lender or Lenders be required to refund any late fees paid by Borrower, notwithstanding the preceding proviso. Borrower, Agent, Swingline Lender, Issuing Lender, and Lenders agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date hereof and represents a fair and reasonable estimate of the costs that Agent, Swingline Lender, Issuing Lender and Lenders will incur by reason of late payment. Borrower, Agent, Swingline Lender, Issuing Lender and Lenders further agree that proof of actual damages would be costly and inconvenient. Acceptance of any late charge shall not constitute a waiver of the default with respect to the overdue installment, and shall not prevent Agent from exercising any of the other rights available hereunder or any other Loan Document. Such late charge shall be paid without prejudice to any other rights of Agent.

(f) Computation of Interest. Interest and fees shall be computed on the basis of the actual number of days elapsed in the period during which interest or fees accrue and a year of three hundred sixty (360) days. In computing interest on any Loan, the date of the making of the Loan shall be included and the date of payment shall be excluded; provided, however, that if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan. Notwithstanding subsections (a), (b), (d) and (e) above, interest in respect of any Loan shall not exceed the maximum rate permitted by applicable law.

(g) Changes; Legal Restrictions. In the event that after the Closing Date (A) the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a court or Governmental Authority or any change in the interpretation or application thereof by a court or Governmental Authority, or (B) compliance by Agent, Swingline Lender, Issuing Lender or any Lender with any request or directive made or issued after the Closing Date (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) from any central bank or other Governmental Authority or quasi-governmental authority:

(i) subjects Agent, Swingline Lender, Issuing Lender or any Lender to any tax, duty or other charge of any kind with respect to the Facility, this Agreement or any of the other Loan Documents or the Loans or the Letters of Credit or changes the basis of taxation of payments to Agent, Swingline Lender, Issuing Lender or such Lender of principal, fees, interest or any other amount payable hereunder, except for net income, gross receipts, gross profits or franchise taxes imposed by any jurisdiction and not specifically based upon loan transactions (all such non-excepted taxes, duties and other charges being hereinafter referred to as "Lender Taxes");

(ii) imposes, modifies or holds applicable, in the determination of Agent, Swingline Lender, Issuing Lender or any Lender, any reserve, special deposit, compulsory loan, FDIC insurance, capital allocation or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, Agent, Swingline Lender, Issuing Lender or such Lender or any applicable lending office (except to the extent that the reserve and FDIC insurance requirements are reflected in the "Base Rate" or "LIBOR Rate"); or

(iii) imposes on Agent, Swingline Lender, Issuing Lender or any Lender any other condition materially more burdensome in nature, extent or consequence than those in existence as of the Closing Date;

and the result of any of the foregoing is to (X) increase the cost to Agent, Swingline Lender, Issuing Lender or any Lender of making, renewing, maintaining or participating in the Loans or issuing or participating in the Letters of Credit or to reduce any amount receivable hereunder or thereunder or (Y) to require Agent, Swingline Lender, Issuing Lender or any Lender or any applicable lending office to make any payment calculated by reference to the amount of the Loan held or interest received by it; then, in any such case, Borrower shall promptly pay to Agent, Swingline Lender, Issuing Lender or such Lender, as applicable, upon demand, such amount or amounts (based upon a reasonable allocation thereof by Agent, Swingline Lender, Issuing Lender or such Lender to the financing transactions contemplated by this Agreement and affected by this Section 2.03(g)) as may be necessary to compensate Agent, Swingline Lender, Issuing Lender or such Lender for any such additional cost incurred, reduced amounts received or additional payments made to the extent Agent, Swingline Lender, Issuing Lender or such Lender generally imposes such additional costs, losses and payments on other borrowers in similar circumstances. Agent, Swingline Lender, Issuing Lender or such Lender shall deliver to Borrower and in the case of a delivery by a Lender, such Lender shall also deliver to Agent, a written statement in reasonable detail of the claimed additional costs incurred, reduced amounts received or additional payments made and the basis therefor as soon as reasonably practicable after Agent or such Lender, as applicable, obtains knowledge thereof.

(h) Certain Provisions Regarding LIBOR Loans

(i) LIBOR Lending Unlawful. If any Lender shall determine in good faith that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender to make or maintain any Loan as a LIBOR

Loan, (A) the obligations of the Lenders to make or maintain any Loans as LIBOR Loans shall, upon such determination, forthwith be suspended until such Lender shall notify Agent that the circumstances causing such suspension no longer exist, and (B) if required by law or such assertion, all LIBOR Loans shall automatically convert into Base Rate Loans.

(ii) Deposits Unavailable. If Agent shall have determined in good faith that adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBOR Loans, then, upon notice from Agent to Borrower the obligations of all Lenders to make or maintain Loans as LIBOR Loans shall forthwith be suspended until Agent shall notify Borrower that the circumstances causing such suspension no longer exist. Agent will give such notice when it determines, in good faith, that such circumstances no longer exist; provided, however, that Agent shall not have any liability to any Person with respect to any delay in giving such notice.

(iii) Funding Losses. In the event any Lender shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make or maintain any portion of any Loan as a LIBOR Loan) as a result of:

(A) any continuance, conversion, repayment or prepayment of the principal amount of any LIBOR Loans for any reason whatsoever on a date other than the scheduled last day of the Interest Period applicable thereto; or

(B) any Loans not being made as LIBOR Loans in accordance with the Notice of Borrowing therefor, other than as a result of such Lender's breach of its obligation to fund such Loans in accordance with the terms hereof;

then, within fifteen (15) Business Days after Borrower's receipt of the written notice of such Lender to Borrower with a copy to Agent, Borrower shall reimburse such Lender for such loss or expense; provided, however, that each Lender will use reasonable efforts to minimize such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of demonstrable error, be conclusive and binding on the parties hereto.

(i) Withholding Tax Exemption. Each Lender that is not created or organized under the laws of the United States of America or a political subdivision thereof shall deliver to Borrower and Agent no later than the Closing Date (or, in the case of a Lender which becomes a Lender pursuant to Section 11.13, the date upon which such Lender becomes a party hereto) a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender, in a form satisfactory to Borrower and Agent, to the effect that such Lender is capable, under the provisions of an applicable treaty concluded by the United States of America (in which case the certificate shall be accompanied by three (3) accurate and complete duly executed originals of Form W-8BEN of the Internal Revenue Service) or under Section 1442 of the Internal Revenue Code (in which case the certificate shall be accompanied by three (3) accurate and complete duly executed originals of Form W-8ECI of the Internal Revenue Service), of receiving payments of principal, interest and fees hereunder without deduction or withholding of United States federal

income tax. Further, if at any time a Lender changes its applicable lending office or selects an additional applicable lending office, it shall, at the same time or promptly thereafter, but only to the extent the certificate and forms previously delivered by it hereunder are no longer applicable or effective, deliver to Borrower and Agent in replacement for, or in addition to, the certificate and forms previously delivered by it hereunder, a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender accompanied by three (3) accurate and complete duly executed originals of either Form W-8BEN of the Internal Revenue Service or Form W-8ECI of the Internal Revenue Service, whichever is applicable, indicating that such Lender is entitled to receive payments of principal, interest and fees for the account of such changed or additional applicable lending office under this Agreement without deduction or withholding of United States federal tax. Each Lender further agrees to deliver to Borrower and Agent a true and accurate certificate executed in duplicate by a duly authorized officer of such Lender accompanied by three (3) accurate and complete duly executed originals of either Form W-8BEN of the Internal Revenue Service or Form W-8ECI of the Internal Revenue Service, whichever is appropriate, substantially in a form satisfactory to Borrower and Agent, before or promptly upon the occurrence of any event requiring a change in the most recent certificate or Internal Revenue Service form previously delivered by it to Borrower and Agent pursuant to this Section 2.03(j). Further, each Lender which delivers a certificate accompanied by Form W-8BEN of the Internal Revenue Service covenants and agrees to deliver to Borrower and Agent within fifteen (15) days prior to January 1, 2003, and every third (3rd) anniversary of such date thereafter, on which this Agreement is still in effect, another such certificate and three (3) accurate and complete original signed copies of Form W-8BEN (or any successor form or forms required under the Internal Revenue Code or the applicable regulations promulgated thereunder), and each Lender that delivers a certificate accompanied by Form W-8ECI of the Internal Revenue Service covenants and agrees to deliver to Borrower and Agent within fifteen (15) days prior to the beginning of each subsequent taxable year of such Lender during which this Agreement is still in effect, another such certificate and three (3) accurate and complete original signed copies of Internal Revenue Service Form W-8ECI (or any successor form or forms required under the Internal Revenue Code or the applicable regulations promulgated hereunder). If (i) any Lender is required under this Section 2.03(j) to provide a certificate or other evidence described above and fails to deliver to Borrower and Agent such certificate or other evidence or (ii) any Lender delivers a certificate to the effect that, as a result of the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a Governmental Authority after the date such Lender became a party hereto, such Lender is not capable of receiving payments of interest hereunder without deduction or withholding of United States federal income tax as specified therein and that it is not capable of recovering the full amount of the same from a source other than Borrower, then, to the extent required by law, as the sole consequence of such Lender's failure to deliver the certificate described in (i) above or such Lender's delivery of the certificate described in (ii) above, Borrower shall be entitled to deduct or withhold taxes from the payments owed to such Lender.

2.04 Fees.

(a) Intentionally Deleted.

(b) Unused Facility Fee. Until the Obligations are paid in full and this Agreement is terminated or, if sooner, the date the Commitments terminate, and subject to Section 11.04(b), Borrower shall pay to Agent, for the account of each Lender, an Unused



Facility Fee accruing from and after the Closing Date at the rate described below upon the amount during each calendar quarter of (i) the Facility, minus (ii) the sum of (A) the average daily aggregate principal balance of all Loans then outstanding other than Swingline Loans and (B) the average daily aggregate face amount of all outstanding Letters of Credit (the "Unused Amount"). The Unused Facility Fee will be calculated and will accrue at the rate per annum of fifteen one-hundredths of one percent (.15%). Subject to Section 11.04(b), each Lender shall be entitled to receive its Pro Rata Share of such Unused Facility Fee. All such Unused Facility Fees payable under this paragraph shall be payable in arrears on the fifth Business Day in each calendar quarter beginning with the first calendar quarter after the Closing Date.

(c) Arrangement and Administrative Agency Fees. Borrower shall pay Agent such fees as are provided for in the separate fee agreement between Agent and Borrower, as in existence from time to time.

(d) Letter of Credit Fee. With respect to each Letter of Credit, Borrower agrees to pay to Agent (i) a letter of credit fee equal to the Applicable Margin on the face amount of such Letter of Credit for the term of such Letter of Credit to be distributed by Agent to each Lender according to its Pro Rata Share payable in arrears on the fifth Business Day in each calendar quarter beginning with the first calendar quarter after the Closing Date and ending on the date of the expiration, return or termination of such Letter of Credit if such date is a date other than the first Business Day of a calendar month and (ii) a non-refundable issuing fee of \$500.00 solely for the account of Issuing Lender, payable in full on the date of issuance thereof.

(e) Payment of Fees. The fees described in this Section 2.04 represent compensation for services rendered and to be rendered separate and apart from the lending of money or the provision of credit and do not constitute compensation for the use, detention or forbearance of money, and the obligation of Borrower to pay the fees described herein shall be in addition to, and not in lieu of, the obligation of Borrower to pay interest, other fees and expenses otherwise described in this Agreement. All fees shall be payable when due in California in immediately available funds and shall be non-refundable when paid. If Borrower fails to make any payment of fees or expenses specified or referred to in this Agreement due to Agent or Lenders, including without limitation those referred to in this Section 2.04 or otherwise under this Agreement or any separate fee agreement between Borrower and Agent relating to this Agreement, when due, the amount due shall bear interest until paid at the Base Rate and, after five (5) days at the rate specified in Section 2.03(d) (but not to exceed the maximum rate permitted by applicable law) and shall constitute part of the Obligations. All fees described in this Section 2.04 which are expressed as a per annum charge shall be calculated on the basis of the actual number of days elapsed in a three hundred sixty (360) day year.

#### 2.05 Payments.

(a) Voluntary Prepayments. Borrower may, upon not less than three (3) Business Days prior written notice (or with written notice not later than 1:00 P.M. (California time) on the same Business Day in the case of a Swingline Loan), at any time and from time to time, prepay any Loans, without premium or penalty (other than as set forth in Section 2.03(h)(iii)), in whole or in part in amounts not less than One Hundred Thousand Dollars (\$100,000) or integral multiples of Twenty-Five Thousand Dollars (\$25,000) in excess of One Hundred Thousand Dollars (\$100,000). Any notice of prepayment given to Agent under this

Section 2.05(a) shall specify the date of prepayment and the aggregate principal amount of the prepayment. All prepayments of principal shall be accompanied by a payment of all accrued and unpaid interest thereon.

(b) Manner and Time of Payment. All payments of principal, interest and fees hereunder payable to Agent, Swingline Lender, Issuing Lender or the Lenders shall be made without condition or reservation of right and free of set-off or counterclaim, in Dollars and by (i) wire transfer (pursuant to Agent's written wire transfer instructions) of immediately available funds, delivered to Agent not later than 11:00 A.M. (California time) (or 2:00 P.M. (California time) in the case of a Swingline Loan) on the date due; and funds received by Agent after that time and date shall be deemed to have been paid on the next succeeding Business Day or (ii) by check (pursuant to Agent's written check payment instructions) delivered to Agent, such check and the payment intended to be covered thereby to be deemed to have been paid on the date Agent receives immediately available funds therefor. All payments of principal, interest and fees hereunder shall be made by (i) wire transfer of immediately available funds to Wells Fargo Bank, N.A. (ABA number 121000248) for credit to account number AC2963507207, reference MHC Operating Limited Partnership, loan number 6023AMC with telephonic notice to Jean Randall-Hall at (310) 335-9492 or (ii) check payable to Wells Fargo Bank, N.A., and delivered to Agent at 2120 E. Park Place, Suite 100, El Segundo, California 90245, Attn: Jean Randall-Hall, or to such other bank, account or address as Agent may specify in a written notice to Borrower.

(c) Payments on Non-Business Days. Whenever any payment to be made by Borrower hereunder shall be stated to be due on a day which is not a Business Day, payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder and of any of the fees specified in Section 2.04, as the case may be.

Increased Capital.(a) If either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) compliance by Agent, Swingline Lender, Issuing Lender or any Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) made or issued after the Closing Date affects or would affect the amount of capital required or expected to be maintained by Agent, Swingline Lender, Issuing Lender or such Lender or any corporation controlling Agent, Swingline Lender, Issuing Lender or such Lender, and Agent, Swingline Lender, Issuing Lender or such Lender determines that the amount of such capital is increased by or based upon the existence of the obligations of Agent, Swingline Lender, Issuing Lender or such Lender, then, upon demand by Agent, Swingline Lender, Issuing Lender or such Lender, Borrower shall immediately pay to Agent, Swingline Lender, Issuing Lender or such Lender, from time to time as specified by Agent, Swingline Lender, Issuing Lender or such Lender, additional amounts sufficient to compensate Agent, Swingline Lender, Issuing Lender or such Lender in light of such circumstances, to the extent that Agent, Swingline Lender, Issuing Lender or such Lender reasonably determines such increase in capital to be allocable to the existence of the obligations of Agent, Swingline Lender, Issuing Lender or such Lender hereunder and to the extent Agent, Swingline Lender, Issuing Lender or such Lender generally imposes such amounts on other borrowers in similar circumstances. A certificate as to such amounts submitted to Borrower by Agent, Swingline Lender, Issuing Lender or such Lender shall, in the absence of manifest error, be conclusive and binding for all purposes.

2.07 Notice of Increased Costs. Each of Agent, Swingline Lender, Issuing Lender and the Lenders agrees that, as promptly as reasonably practicable after it becomes aware of the occurrence of an event or the existence of a condition which would cause it to be affected by any of the events or conditions described in Section 2.03(g) or (h), or Section 2.06, it will notify Borrower and provide in such notice a reasonably detailed calculation of the amount due from Borrower, and provide a copy of such notice to Agent, of such event and the possible effects thereof. If Agent, Swingline Lender, Issuing Lender or the affected Lender shall fail to notify Borrower of the occurrence of any such event or the existence of any such condition within ninety (90) days following the end of the month during which such event occurred or such condition arose, then Borrower's liability for any amounts described in said Sections 2.03(g) and (h) and 2.06 incurred by Agent, Swingline Lender, Issuing Lender or such affected Lender as a result of such event or condition shall be limited to those attributable to the period occurring subsequent to the ninetieth (90th) day prior to the date upon which Agent, Swingline Lender, Issuing Lender or such affected Lender actually notified Borrower of such event or condition.

2.08 Option to Replace Lenders.

(a) Lenders. If any Lender shall make any demand for payment or reimbursement pursuant to Section 2.03(g), Section 2.03(h) or Section 2.06, then, provided that (a) there does not then exist any Unmatured Event of Default or Event of Default and (b) the circumstances resulting in such demand for payment or reimbursement are not applicable to all Lenders, Borrower may terminate the Commitment of such Lender, in whole but not in part, by (i) giving such Lender and Agent not less than three (3) Business Days prior written notice thereof, which notice shall be irrevocable and effective only upon receipt thereof by such Lender and Agent and shall specify the effective date of such termination, (ii) paying to such Lender (and there shall become due and payable) on such date the outstanding principal amount of all Loans made by such Lender, all interest thereon, and all other Obligations owed to such Lender, including, without limitation, amounts owing under Sections 2.03(g), 2.03(h)(iii), 2.04 and 2.06, if any, and (iii) pursuant to the provisions of Section 11.13, proposing the introduction of a replacement Lender reasonably satisfactory to Agent, or obtaining the agreement of one or more existing Lenders, to assume the entire amount of the Commitment of the Lender whose Commitment is being terminated, on the effective date of such termination. Upon the satisfaction of all of the foregoing conditions, such Lender which is being terminated pursuant to this Section 2.08 shall cease to be a "Lender" for purposes of this Agreement provided that Borrower shall continue to be obligated to such Lender under Sections 12.01 and 12.02 (and any other indemnifications contained herein or in any other Loan Document) with respect to or on account of unpaid, unliquidated, unknown or similar claims or liabilities accruing prior to such Lender ceasing to be a "Lender" for purposes of this Agreement.

(b) Agent, Swingline Lender and Issuing Lender. If Agent, Swingline Lender or Issuing Lender shall make any demand for payment or reimbursement pursuant to Section 2.03(g), Section 2.03(h) or Section 2.06, then, provided that (a) there does not then exist any Unmatured Event of Default or Event of Default and (b) the circumstances resulting in such demand for payment or reimbursement are not applicable to all Lenders, Borrower may remove Agent, Swingline Lender and Issuing Lender by (i) giving the Lenders and Agent not less than thirty (30) Business Days prior written notice thereof, and (ii) paying to Agent, Swingline Lender and Issuing Lender (and there shall become due and payable) on such date all other Obligations owed to Agent, Swingline Lender and Issuing Lender, including, without limitation, amounts

owing under Sections 2.03(g), 2.03(h), 2.04 and 2.06, if any. Agent, Swingline Lender and Issuing Lender shall be replaced in accordance with the provisions of Section 11.09 hereof.

#### 2.09 Letters of Credit.

(a) Letter of Credit Availability. Subject to the terms and conditions set forth in this Agreement, at any time and from time to time through the date that is thirty (30) days prior to the Maturity Date, Issuing Lender shall issue such Letters of Credit for the account of Borrower as Borrower may request in accordance with this Section 2.09; provided that (i) upon issuance of such Letters of Credit, the sum of the aggregate principal amount of all outstanding Loans (including Swingline Loans) plus the aggregate face amount of all outstanding Letters of Credit shall not exceed Loan Availability, provided, that if a Base Rate Loan is being made pursuant to Section 2.09(e) hereof to reimburse Issuing Lender for a drawn Letter of Credit, to avoid a duplicative reduction in the amount of Loan Availability, the drawn Letter of Credit shall not be considered outstanding; (ii) the aggregate face amount of all outstanding Letters of Credit shall not exceed Thirty Million Dollars (\$30,000,000); and (iii) unless all Lenders otherwise consent in writing, the term of any Letter of Credit shall not extend or be extended beyond the date which is ten (10) days prior to the Maturity Date and no Letter of Credit shall contain an automatic extension or renewal clause. Use of funds drawn under Letters of Credit shall be subject to the same conditions as those for use of Loan proceeds set forth in Section 7.01(i) hereof.

(b) Request for Letter of Credit. Borrower shall deliver to Agent and Issuing Lender a duly executed letter of credit application substantially in the form attached as Exhibit H hereto (a "Letter of Credit Application") not later than 10:00 A.M., (California time), at least five (5) Business Days prior to the date upon which a requested Letter of Credit is to be issued. Borrower shall further deliver to Agent and Issuing Lender such additional instruments and documents as Issuing Lender may reasonably require, in conformity with customary and commercially reasonable practices or law, in connection with the issuance of such Letter of Credit.

(c) Issuance of Letters of Credit. Subject to the conditions set forth in this Agreement, Issuing Lender shall issue the Letter of Credit on or before 5:00 P.M. (California time), on or before the day which is five (5) Business Days following receipt of the documents last due pursuant to Section 2.09(b) hereof in respect thereof. Upon issuance of a Letter of Credit, Issuing Lender shall promptly notify Lenders of the amount and terms thereof. Issuing Lender shall provide copies of each Letter of Credit to Lenders promptly following issuance thereof and shall notify Lenders promptly of all payments, reimbursements, expirations, negotiations, transfers and other activity with respect to outstanding Letters of Credit.

(d) Participations. Each Lender, upon issuance by Issuing Lender of a Letter of Credit in accordance with the provisions of this Agreement, shall be deemed to have purchased without recourse a risk participation from Issuing Lender in such Letter of Credit and the obligations arising thereunder, in each case in an amount equal to its Pro Rata Share of the obligations under such Letter of Credit, and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to Issuing Lender therefor and discharge when due, its Pro Rata Share of the obligations arising under such Letter of Credit.

(e) Reimbursement. In the event of any drawing or request for drawing under any Letter of Credit, Issuing Lender will promptly notify Borrower and Agent thereof. Unless Borrower shall notify Issuing Lender of its intent to otherwise reimburse Issuing Lender immediately upon receipt of notice from Issuing Lender of a drawing under a Letter of Credit, Borrower shall be deemed to have requested Base Rate Loans in the amount of the drawing as provided in subsection (f) hereof, the proceeds of which will be used to satisfy the reimbursement obligations. Borrower shall reimburse Issuing Lender on the day of drawing under any Letter of Credit (either with the proceeds of a Loan obtained hereunder or otherwise) in same day funds as provided herein. If Borrower shall fail to reimburse Issuing Lender as provided hereinabove, the unreimbursed amount of such drawing shall bear interest at a per annum rate equal to the Base Rate plus two percent (2%). Borrower's reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of set-off, counterclaim or defense to payment Borrower may claim or have against Issuing Lender, Agent, the Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including, without limitation, any defense based on any failure of Borrower to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit; provided, however, that (i) the Borrower shall not be obligated to reimburse Issuing Lender and (ii) Lenders shall not be obligated to fund Loans or purchase participations hereunder in reimbursement of Issuing Lender, for any wrongful payment made by Issuing Lender under a Letter of Credit as a result of acts or omissions constituting bad faith, willful misconduct or gross negligence on the part of Issuing Lender. The Letter of Credit Obligations will be evidenced by the Letter of Credit Note.

(f) Repayment with Loans. On any day on which Borrower shall have requested, or been deemed to have requested, Base Rate Loans to reimburse a drawing under a Letter of Credit, Agent shall give notice to the Lenders that such Loans have been requested or deemed requested in connection with a drawing under a Letter of Credit, in which case such Loans (collectively, a "Letter of Credit Mandatory Borrowing") shall be immediately made by all Lenders (without giving effect to any termination of the Commitments pursuant to Section 10.02 hereof) pro rata based on each Lender's Pro Rata Share and the proceeds thereof shall be paid directly to Issuing Lender for application to the respective Letter of Credit Obligations. Each Lender hereby irrevocably agrees to make such Loans promptly upon any such request or deemed request in the amount and in the manner specified in the preceding sentence and on the same such date (or the next Business Day if such notice is received after 10:00 A.M. (California time)) notwithstanding (i) the amount of the Letter of Credit Mandatory Borrowing may not comply with the minimum amount for Borrowings otherwise required hereunder, (ii) whether any conditions specified in Section 4.02 are then satisfied, (iii) whether an Event of Default or Unmatured Event of Default then exists, (iv) failure of any such request or deemed request for a Borrowing to be made by the time otherwise required in Section 2.01 hereof, (v) the date of such Letter of Credit Mandatory Borrowing (provided that such date must be a Business Day), or (vi) any termination of the Commitments immediately prior to such Letter of Credit Mandatory Borrowing or contemporaneously therewith. In the event that any Letter of Credit Mandatory Borrowing cannot for any reason occur in respect of a Letter of Credit on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to Borrower), then each Lender hereby agrees that it shall forthwith fund (as of the date the Letter of Credit Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from Borrower on or after such date and prior to such funding) its participation interest in the outstanding obligations arising in

connection with such Letter of Credit, provided that (A) all interest payable on Borrower's reimbursement obligation with respect to such Letter of Credit shall be for the account of Issuing Lender until but excluding the day upon which the Letter of Credit Mandatory Borrowing would otherwise have occurred, and (B) in the event of a delay between the day upon which the Letter of Credit Mandatory Borrowing would otherwise have occurred and the time any funding of a participation pursuant to this sentence is actually made, the funding Lender shall be required to pay to the Issuing Lender interest on the principal amount of such participation for each day from and including the day upon which the Letter of Credit Mandatory Borrowing would otherwise have occurred to but excluding the date of funding of such participation, at the rate equal to the Federal Funds Rate, for the two (2) Business Days after the date the Letter of Credit Mandatory Borrowing would otherwise have occurred, and thereafter at a rate equal to the Base Rate.

(g) Modification, Extension. The issuance of any supplement, modification, amendment, renewal, or extension to any Letter of Credit shall, for purposes hereof, be treated in all respects the same as if it were the issuance of a new Letter of Credit hereunder.

(h) Uniform Customs and Practices. Issuing Lender may have the Letters of Credit be subject to The Uniform Customs and Practice for Documentary Credits, as published as of the date of issue by the International Chamber of Commerce (the "UCP"), in which case the UCP may be incorporated therein and deemed in all respects to be a part thereof.

(i) Collateralization at Termination Date. Upon the occurrence of the Termination Date prior to the expiration of all Letters of Credit, Borrower shall provide to Issuing Lender a standby letter of credit issued by a bank with a rating of its senior unsecured debt obligations of not less than A by Moody's, in form and substance satisfactory to Issuing Lender, in favor of Issuing Lender in a face amount equal to the outstanding Letters of Credit on that date, or shall make other provisions satisfactory to Issuing Lender and Agent for the full collateralization, by cash or cash equivalent, of such outstanding Letters of Credit. In the event of failure of Borrower to comply with the requirement of this Section 2.09(i), such portion of the face amount of all outstanding Letters of Credit as to which Borrower has failed to comply shall be deemed to be immediately due and payable.

(j) Limitation of Liability. Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit absent the bad faith, gross negligence or willful misconduct of Issuing Lender. Neither Issuing Lender, Agent, any Lender nor any of their respective officers, directors, employees or agents shall be liable or responsible for, nor shall Borrower's obligations hereunder in respect of such Letters of Credit be impaired as a result of any of the following absent the bad faith, gross negligence or willful misconduct of Issuing Lender:

(i) any lack of validity or enforceability of any Letter of Credit or any other agreement or instrument relating thereto (such Letter of Credit and any other agreement or instrument relating thereto being, collectively, the "Letter of Credit Documents");

(ii) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith;

(iii) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) the existence of any claim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for whom any such beneficiary or any such transferee may be acting), Issuing Lender or any other Person, whether in connection with the transactions contemplated by the Letter of Credit Documents or any unrelated transaction;

(v) failure of any documents to bear any reference or adequate reference to the Letter of Credit; or

(vi) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit.

In furtherance and not in limitation of the foregoing, Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, absent the bad faith, gross negligence or willful misconduct of Issuing Lender.

(k) Lenders. Any action taken or omitted to be taken by Issuing Lender under or in connection with any Letter of Credit, if taken or omitted in the absence of bad faith, gross negligence or willful misconduct, shall not put Issuing Lender under any resulting liability to any Lender or relieve that Lender of its obligations hereunder to Issuing Lender. In determining whether to pay under any Letter of Credit, Issuing Lender shall have no obligations to Lenders other than to confirm that any documents required to be delivered under such Letter of Credit appear to have been delivered and that they appear to comply on their face with the requirements of such Letter of Credit.

(l) Indemnification. Borrower shall indemnify and hold harmless Issuing Lender, Agent and Lenders from and against any and all claims, damages, losses, liabilities, reasonable costs and expenses of any kind whatsoever, including reasonable fees and expenses of attorneys that such indemnified Person may incur, together with all reasonable costs and expenses resulting from the compromise or defense of any claims or liabilities hereinafter described, by reason of or in connection with (i) the execution and delivery or transfer of, or payment or failure to pay under, any Letter of Credit, (ii) any suit, action or proceeding brought by any Person to require or present payment under any Letter of Credit, or (iii) any breach by Borrower of any warranty, covenant, term or condition in, or the occurrence of any default under, any Letter of Credit or any related contract; provided, however, that Borrower shall not be required to indemnify Issuing Lender, Agent or any Lender for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct, gross negligence, bad faith or fraud of such indemnified Person; and provided, further, that Issuing Lender will be liable to Borrower for any damages suffered by Borrower as a result of Issuing Lender's grossly negligent or willful failure to pay under any Letter of Credit after the presentment to it of documentation in strict compliance with the terms and conditions of

the Letter of Credit and absent any challenge by any Person (other than Issuing Lender or any of its affiliates) to the making of such payment.

#### 2.10 Swingline Loans

(a) Swingline Availability. Subject to the terms and conditions set forth in this Agreement, Swingline Lender agrees to make certain revolving loans to Borrower (each a "Swingline Loan" and, collectively, the "Swingline Loans") from time to time during the period from the Closing Date to the fifth day preceding the Maturity Date; provided, however, that the aggregate amount of Swingline Loans outstanding at any time shall not exceed the lesser of (i) THIRTY MILLION DOLLARS (\$30,000,000), and (ii) the excess of Loan Availability over the sum of the aggregate principal amount of all outstanding Loans (excluding Swingline Loans) plus the aggregate face amount of all outstanding Letters of Credit, provided, that if a Base Rate Loan is being made pursuant to Section 2.09(e) hereof to reimburse Issuing Lender for a drawn Letter of Credit, to avoid a duplicative reduction in the amount of Loan availability, the drawn Letter of Credit shall not be considered outstanding. Subject to the limitations set forth herein, any amounts repaid in respect of Swingline Loans may be reborrowed.

#### (b) Swingline Borrowings.

(i) Notice of Borrowing. Whenever Borrower desires to borrow under this Section 2.10, Borrower shall give Swingline Lender and Agent at Wells Fargo Real Estate Group Disbursement Center, 2120 East Park Place, Suite 100, El Segundo, California 90245, with a copy to Wells Fargo Bank, N.A., 225 West Wacker Drive, Suite 2550, Chicago, Illinois 60606, Attn: Account Officer, or such other address as Agent shall designate, an original or facsimile Notice of Borrowing no later than 11:00 A.M. (California time) on the proposed date of such borrowing (and confirmed by telephone by such time), specifying (A) that a Swingline Loan is being requested, (B) the amount of such Swingline Loan, (C) the proposed date of such Swingline Loan, which shall be a Business Day, and (D) stating that no Event of Default or Unmatured Event of Default has occurred and is continuing both before and after giving effect to such Swingline Loan. Such notice shall be irrevocable.

(ii) Minimum Amounts; Frequency of Swingline Loans. Each Swingline Loan shall be in a minimum principal amount of \$1,000,000, or an integral multiple of \$100,000 in excess thereof. Swingline Loans shall be available no more frequently than six (6) times in any month.

(iii) Making of Swingline Loans. Swingline Lender shall make the proceeds of each Swingline Loan available to Borrower in El Segundo, California on the applicable Funding Date in Dollars and in immediately available funds not later than 1:00 P.M. (California time) on such Funding Date to Borrower's account, at Bank of America, Account Number 75-01943 in Chicago, Illinois or such other account specified in the Notice of Borrowing and acceptable to Agent.

(iv) Repayment of Swingline Loans. Each Swingline Loan shall be due and payable on the earliest of (A) five (5) days from the date of the applicable



Funding Date for such Swingline Loan, (B) the date of the next Borrowing under Section 2.01 hereof (other than a Letter of Credit Mandatory Borrowing) or (C) the Termination Date. If, and to the extent, any Swingline Loans shall be outstanding on the date of any Borrowing under Section 2.01 hereof (other than a Letter of Credit Mandatory Borrowing), such Swingline Loans shall first be repaid from the proceeds of such Borrowing prior to the disbursement of the same to Borrower. If, and to the extent, a Borrowing under Section 2.01 hereof (other than a Letter of Credit Mandatory Borrowing) is not requested prior to the Termination Date or the end of the five (5) day period after a Swingline Loan is made, Borrower shall be deemed to have requested Base Rate Loans in the amount of the applicable Swingline Loan then outstanding, the proceeds of which shall be used to repay such Swingline Loan to the Swingline Lender. In addition, the Swingline Lender may, at any time, in its sole discretion, by written notice to Borrower and Agent, demand repayment of its Swingline Loans by way of Base Rate Loans, in which case Borrower shall be deemed to have requested Base Rate Loans in the amount of such Swingline Loans then outstanding, the proceeds of which shall be used to repay such Swingline Loans to the Swingline Lender. Any Borrowing which is deemed requested by Borrower in accordance with this Section 2.10(b)(iv) is hereinafter referred to as a "Swingline Mandatory Borrowing". Each Lender hereby irrevocably agrees to make Base Rate Loans in accordance with its Pro Rata Share promptly upon receipt of notice from the Swingline Lender of any such deemed request for a Swingline Mandatory Borrowing in the amount and in the manner specified in the preceding sentences and on the date such notice is received by such Lender (or the next Business Day if such notice is received after 10:00 A.M. (California time)) notwithstanding (I) the amount of the Swingline Mandatory Borrowing may not comply with the minimum amount for Borrowings otherwise required hereunder, (II) whether any conditions specified in Section 4.02 hereof are then satisfied, (III) whether an Event of Default or Unmatured Event of Default then exists, (IV) failure of any such deemed request for a Borrowing to be made by the time otherwise required in Section 2.01 hereof, (V) the date of such Swingline Mandatory Borrowing (provided that such date must be a Business Day), or (VI) any termination of the Commitments immediately prior to such Swingline Mandatory Borrowing or contemporaneously therewith; provided, however, that no Lender shall be obligated to make any Loans under this Section 2.10(b)(iv) if an Event of Default or Unmatured Event of Default then exists and the applicable Swingline Loan was made by the Swingline Lender without receipt of a written Notice of Borrowing in the form specified in subclause (i) above or after Agent had delivered a notice of an Event of Default or Unmatured Event of Default which had not been rescinded.

(v) Purchase of Participations. In the event that any Swingline Mandatory Borrowing cannot for any reason occur on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to Borrower), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Swingline Mandatory Borrowing would otherwise have occurred, but adjusted for any payment received from Borrower on or after such date and prior to such purchase)

from the Swingline Lender such participations in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its Pro Rata Share, provided that (A) all interest payable on the Swingline Loans with respect to any participation shall be for the account of the Swingline Lender until but excluding the day upon which the Swingline Mandatory Borrowing would otherwise have occurred, and (B) in the event of a delay between the day upon which the Swingline Mandatory Borrowing would otherwise have occurred and the time any purchase of a participation pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender interest on the principal amount of such participation for each day from and including the day upon which the Swingline Mandatory Borrowing would otherwise have occurred to but excluding the date of payment for such participation, at the rate equal to the Federal Funds Rate, for the two (2) Business Days after the date the Swingline Mandatory Borrowing would otherwise have occurred, and thereafter at a rate equal to the Base Rate. Notwithstanding the foregoing, no Bank shall be obligated to purchase a participation in any Swingline Loan if an Event of Default or Unmatured Event of Default then exists and such Swingline Loan was made by the Swingline Lender without receipt of a written Notice of Borrowing in the form specified in subclause (i) above or after Agent had delivered a notice of an Event of Default or Unmatured Event of Default which had not been rescinded.

(c) Interest Rate. Each Swingline Loan shall bear interest at a rate per annum equal to the Base Rate minus 1.5% per annum.

### ARTICLE III.

#### EXTENSION OPTIONS

3.01 First Extension Option. At the written request of Borrower made at least thirty (30) days prior to the Initial Maturity Date, the Maturity Date shall be extended to the one-year anniversary of the Initial Maturity Date (the "First Extended Maturity Date") provided that the following conditions are satisfied:

(a) no Event of Default or Unmatured Event of Default shall have occurred and be continuing as of the Initial Maturity Date;

(b) all representations and warranties made by Borrower and the REIT contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the Initial Maturity Date except to the extent they related to a specific date;

(c) Agent shall have received Officer's Certificates of the REIT dated as of the Initial Maturity Date stating that the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in

reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, and that (A) such review has not disclosed the existence as of the date of such Officer's Certificate, and that the signer does not have knowledge of the existence as of the date of such Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default and (B) all representations and warranties made by such entities contained in this Agreement and the other Loan Documents are true and correct in all material respects as of the date of such Officer's Certificate except to the extent they relate to a specific date; and

(d) on or before the Initial Maturity Date, Agent shall have received, on behalf of Agent and Lenders, an extension fee in the amount of one-fourth of one percent (0.25%) of the amount of the Facility.

3.02 Second Extension Option. At the written request of Borrower made at least thirty (30) days prior to the First Extended Maturity Date, the Maturity Date shall be further extended to the one-year anniversary of the First Extended Maturity Date (the "Second Extended Maturity Date") provided that the following conditions are satisfied:

(a) no Event of Default or Unmatured Event of Default shall have occurred and be continuing as of the First Extended Maturity Date;

(b) all representations and warranties made by Borrower and the REIT contained in this Agreement and the other Loan Documents shall be true and correct in all material respects as of the First Extended Maturity Date except to the extent they related to a specific date;

(c) Agent shall have received Officer's Certificates of the REIT dated as of the First Extended Maturity Date stating that the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, and that (A) such review has not disclosed the existence as of the date of such Officer's Certificate, and that the signer does not have knowledge of the existence as of the date of such Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default and (B) all representations and warranties made by such entities contained in this Agreement and the other Loan Documents are true and correct in all material respects as of the date of such Officer's Certificate except to the extent they relate to a specific date; and

(d) on or before the First Extended Maturity Date, Agent shall have received, on behalf of Agent and Lenders, an extension fee in the amount of thirty-five hundredths of one percent (0.35%) of the amount of the Facility.

#### ARTICLE IV.

##### CONDITIONS TO LOANS

4.01 Intentionally Omitted.

4.02 Conditions Precedent to All Loans and Issuance of Letters of Credit. The obligation of each Swingline Lender to make any Swingline Loan requested to be made by it, the obligation of Lender to make any Loan requested to be made by it, and the obligation of Issuing Lender to issue any Letter of Credit requested to be issued by it, on any date, is subject to satisfaction of the following conditions precedent as of such date:

(a) Documents. With respect to a request for a Loan, Agent shall have received in accordance with the provisions of Section 2.01(b) hereof or Section 2.10 hereof (as applicable), an original and duly executed Notice of Borrowing. With respect to a request for a Letter of Credit, Agent and Issuing Bank shall have received in accordance with the provisions of Section 2.09(b) hereof, an original and duly executed Letter of Credit Application together with such other documents as shall be required under Section 2.09(b) hereof.

(b) Additional Matters. As of the Funding Date for any Loan or the issuance date of any Letter of Credit and after giving effect to the Loans and/or Letters of Credit being requested:

(i) Representations and Warranties. All of the representations and warranties of Borrower and the REIT contained in this Agreement and in any other Loan Document (other than representations and warranties which expressly speak only as of a different date) shall be true and correct in all material respects on and as of such Funding Date or issuance date, as though made on and as of such date;

(ii) No Default. No Event of Default or Unmatured Event of Default shall have occurred and be continuing or would result from the making of the requested Loan or issuance for the requested Letter of Credit and all of the financial covenants contained in Articles VIII and IX shall be satisfied; and

(iii) No Material Adverse Change. No change shall have occurred which shall have a Material Adverse Effect.

Each submission by Borrower to Agent of a Notice of Borrowing with respect to a Loan or a request for a Letter of Credit and the acceptance by Borrower of the proceeds of each such Loan made hereunder or the issuance of such Letter of Credit hereunder shall constitute a representation and warranty by Borrower as of the Funding Date in respect of such Loan or the date such Letter of Credit is issued that all the conditions contained in this Section 4.02 have been satisfied.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties as to Borrower. Borrower hereby represents and warrants to Agent, Swingline Lender, Issuing Lender and Lenders as follows:

(a) Organization; Partnership Powers. Borrower (i) is a limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) is duly qualified to do business as a foreign limited partnership and in good standing under the laws of each jurisdiction in which the nature of its business requires it to be so

qualified, except for those jurisdictions where failure to so qualify and be in good standing would not have a Material Adverse Effect and (iii) has all requisite partnership power and authority to own, operate and encumber its property and assets and to conduct its business as presently conducted and as proposed to be conducted in connection with and following the consummation of the transactions contemplated by the Loan Documents.

(b) Authority. Borrower has the requisite partnership power and authority to execute, deliver and perform each of the Loan Documents to which it is or will be a party. The execution, delivery and performance thereof, and the consummation of the transactions contemplated thereby, have been duly approved by the general partner of Borrower, and no other partnership proceedings or authorizations on the part of Borrower or its general or limited partners are necessary to consummate such transactions. Each of the Loan Documents to which Borrower is a party has been duly executed and delivered by Borrower and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and general equitable principles.

(c) Ownership of Borrower. Schedule 5.01(c) sets forth the general partners of Borrower and their respective ownership percentages as of the date hereof. Except as set forth in the partnership agreement of Borrower, no partnership interests (or any securities, instruments, warrants, option or purchase rights, conversion or exchange rights, calls, commitments or claims of any character convertible into or exercisable for partnership interests) of Borrower are subject to issuance under any security, instrument, warrant, option or purchase rights, conversion or exchange rights, call, commitment or claim of any right, title or interest therein or thereto. To Borrower's knowledge, all of the partnership interests in Borrower have been issued in compliance with all applicable Requirements of Law.

(d) No Conflict. The execution, delivery and performance by Borrower of the Loan Documents to which it is or will be a party, and each of the transactions contemplated thereby, do not and will not (i) conflict with or violate Borrower's limited partnership agreement or Certificate of Limited Partnership or other organizational documents, as the case may be, or the organizational documents of any Subsidiary of Borrower or (ii) conflict with, result in a breach of or constitute (with or without notice or lapse of time or both) a default under any Requirement of Law, Contractual Obligation or Court Order of or binding upon Borrower or any of its Subsidiaries, or require termination of any such Contractual Obligation, the consequences of which conflict or breach or default or termination would have a Material Adverse Effect, or result in or require the creation or imposition of any Lien whatsoever upon any Property (except as contemplated herein).

(e) Consents and Authorizations. Borrower has obtained all consents and authorizations required pursuant to its Contractual Obligations with any other Person, the failure of which to obtain would have a Material Adverse Effect, and has obtained all consents and authorizations of, and effected all notices to and filings with, any Governmental Authority necessary to allow Borrower to lawfully execute, deliver and perform its obligations under the Loan Documents to which Borrower is a party.

(f) Governmental Regulation. Borrower is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce

Act, the Investment Company Act of 1940 or any other federal or state statute or regulation such that its ability to incur indebtedness is limited or its ability to consummate the transactions contemplated by the Loan Documents is materially impaired.

(g) Prior Financials. The Consolidated and Combined Balance Sheet as of September 30, 2001, the Consolidated and Combined Statement of Operations for the Quarter Ended September 30, 2001, and the Consolidated and Combined Statement of Cash Flows for the Quarter Ended September 30, 2001 of the REIT contained in the Form 10-Q Quarterly Report of the REIT as of September 30, 2001 (the "Pre-Closing Financials") delivered to Agent prior to the date hereof were prepared in accordance with GAAP in effect on the date such Pre-Closing Financials were prepared and fairly present the assets, liabilities and financial condition of the REIT, on a consolidated basis, at such date and the results of its operations and its cash flows, on a consolidated basis, for the period then ended.

(h) Financial Statements; Projections and Forecasts. Each of the Financial Statements to be delivered to Agent pursuant to Sections 6.01(a) and (b), (i) has been, or will be, as applicable, prepared in accordance with the books and records of the REIT, on a consolidated basis, and (ii) either fairly present, or will fairly present, as applicable, the financial condition of the REIT, on a consolidated basis, at the dates thereof (and, if applicable, subject to normal year-end adjustments) and the results of its operations and cash flows, on a consolidated basis, for the period then ended. Each of the projections delivered to Agent (A) has been, or will be, as applicable, prepared by the REIT and the REIT's financial personnel in light of the past business and performance of the REIT, on a consolidated basis and (B) represent, or will represent, as of the date thereof, the reasonable good faith estimates of such personnel.

(i) Litigation; Adverse Effects.

(i) There is no action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any Governmental Authority, pending, or to the best of Borrower's knowledge, threatened against Borrower or any of its Subsidiaries or any of their respective Properties, in which there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect; and

(ii) Neither Borrower nor any of its Subsidiaries is (A) in violation of any Requirement of Law, which violation has a Material Adverse Effect, or (B) subject to or in default with respect to any Court Order which has a Material Adverse Effect.

(j) No Material Adverse Change. Since September 30, 2001, there has occurred no event which has a Material Adverse Effect.

(k) Payment of Taxes. All tax returns and reports to be filed by Borrower or any of its Subsidiaries have been timely filed, and all taxes, assessments, fees and other governmental charges shown on such returns have been paid when due and payable, except such taxes, if any, as are reserved against in accordance with GAAP, such taxes as are being contested in good faith by appropriate proceedings or such taxes, the failure to make payment of which when due and payable will not have, in the aggregate, a Material Adverse Effect. Borrower has

no knowledge of any proposed tax assessment against Borrower or any of its Subsidiaries that will have a Material Adverse Effect, which is not being actively contested in good faith by such Person.

(l) Material Adverse Agreements. Neither Borrower nor any of its Subsidiaries is a party to or subject to any Contractual Obligation or other restriction contained in its partnership agreement, certificate of partnership, by-laws, or similar governing documents which has a Material Adverse Effect.

(m) Performance. Neither Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Contractual Obligation applicable to it, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under such Contractual Obligation in each case, except where the consequences, direct or indirect, of such default or defaults, if any, will not have a Material Adverse Effect.

(n) Federal Reserve Regulations. No part of the proceeds of the Loan hereunder will be used to purchase or carry any "margin security" as defined in Regulation U or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulation U. Borrower is not engaged primarily in the business of extending credit for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U. Borrower is not engaged primarily in the business of extending credit for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U. No part of the proceeds of the Loans will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulation X or any other regulation of the Federal Reserve Board.

(o) Disclosure. Borrower has not intentionally or knowingly withheld any material fact from Agent in regard to any matter raised in the Loan Documents. Notwithstanding the foregoing, with respect to any projections of Borrower's future performance such representations and warranties are made in good faith and to the best judgment of Borrower at the time such projections were made.

(p) Requirements of Law. To Borrower's knowledge, Borrower and each of its Subsidiaries are in compliance with all Requirements of Law (including without limitation the Securities Act and the Securities Exchange Act, and the applicable rules and regulations thereunder, state securities law and "Blue Sky" laws) applicable to them and their respective businesses, in each case, where the failure to so comply will have a Material Adverse Effect.

(q) Patents, Trademarks, Permits, Etc. Borrower and each of its Subsidiaries owns, is licensed or otherwise has the lawful right to use, or has all permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes used in or necessary for the conduct of Borrower's or such Subsidiary's business as currently conducted, the absence of which would have a Material Adverse Effect. To Borrower's knowledge, the use of such permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes by Borrower or such

Subsidiary does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, have a Material Adverse Effect.

(r) Environmental Matters. To the knowledge of Borrower, except as would not have a Material Adverse Effect and except as set forth on Schedule 5.01(r), (i) the Property and operations of Borrower and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws; (ii) none of the Property or operations of Borrower or any of its Subsidiaries are subject to any Remedial Action or other Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment or from the violation of any Environmental Laws, which Remedial Action or other Liabilities and Costs would have a Material Adverse Effect; (iii) neither Borrower nor any of its Subsidiaries has filed any notice under applicable Environmental Laws reporting a Release of a Contaminant into the environment in violation of any Environmental Laws, except as the same may have been heretofore remedied; (iv) there is not now, nor to Borrower's knowledge has there ever been, on or in the Property of Borrower or any of its Subsidiaries (except in compliance in all material respects with all applicable Environmental Laws): (A) any underground storage tanks, (B) any asbestos-containing material, (C) any polychlorinated biphenyls (PCB's) used in hydraulic oils, electrical transformers or other equipment, (D) any petroleum hydrocarbons or (E) any chlorinated or halogenated solvents; and (v) neither Borrower nor any of its Subsidiaries has received any notice or claim to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment.

(s) ERISA. None of the REIT, Borrower or any Agreement Party is an "employee pension benefit plan" as defined in Section 3(2) of ERISA, an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, a "multiemployer plan" as defined in Sections 4001(a)(3) or 3(37) of ERISA or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code. Except for a prohibited transaction arising solely because of a Lender's breach of the covenant set forth in Section 11.23, none of the Obligations, any of the Loan Documents or the exercise of any of the Agent's or Lenders' rights in connection therewith constitutes a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or otherwise results in a Lender, the Agent or the Lenders being deemed in violation of Sections 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or will by itself result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code. No assets of the REIT, Borrower or any Agreement Party constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code.

Each Borrower Plan is in compliance with ERISA and the applicable provisions of the Internal Revenue Code in all respects except where the failure to comply would not have a Material Adverse Effect. There are no claims (other than claims for benefits in the normal course), actions or lawsuits asserted or instituted against, and none of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates has knowledge of any threatened litigation or claims against the assets of any Borrower Plan or against any fiduciary of such Borrower Plan



with respect to the operation of such Borrower Plan which could have a Material Adverse Effect. No liability to the PBGC has been, or is likely to be, incurred by Borrower, the REIT, any of the Subsidiaries or their ERISA Affiliates other than such liabilities which, in the aggregate, would not have a Material Adverse Effect. None of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates is now contributing to or has ever contributed to or been obligated to contribute to any Multiemployer Plan, no employees or former employees of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates have been covered by any Multiemployer Plan in respect of their employment by Borrower or such Subsidiary or such ERISA Affiliate. None of Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates has engaged in a "prohibited transaction," as such term is defined in Section 4975 of the Internal Revenue Code or in a transaction subject to the prohibitions of Section 406 of ERISA, in connection with any Benefit Plan or Welfare Plan which would subject Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates (after giving effect to any exemption) to the tax or penalty on prohibited transactions imposed by Section 4975 of the Internal Revenue Code, Section 502 of ERISA or any other liability under ERISA which tax, penalty or other liability would have a Material Adverse Effect. None of the Benefit Plans subject to Title IV of ERISA has any material Unfunded Pension Liability as to which Borrower, the REIT, any of the Subsidiaries or any of their ERISA Affiliates is or may be liable, which liability would have a Material Adverse Effect.

(t) Solvency. Borrower is and will be Solvent after giving effect to the disbursements of the Loans and the payment and accrual of all fees then payable hereunder.

(u) Title to Assets; No Liens. Borrower has good, indefeasible and merchantable title to the Property owned or leased by it, and all such Property is free and clear of all Liens, except Permitted Liens and Liens permitted by Section 8.01(b).

(v) Use of Proceeds. Borrower's use of the proceeds of the Loans are, and will continue to be, legal and proper uses (and to the extent necessary, duly authorized by Borrower's partners) and such uses are consistent with all applicable laws and statutes and Section 7.01(i).

(w) Subsidiaries and Investment Affiliates. Each Subsidiary and Investment Affiliate as of the date hereof is set forth on Schedule 5.01(w). Schedule 5.01(w) sets forth the ownership of each such Subsidiary and Investment Affiliate and the material Property owned by such Person as of the date hereof.

5.02 Representations and Warranties as to the REIT. The REIT hereby represents and warrants to Agent, Swingline Lender, Issuing Lender and Lenders as follows:

(a) Organization; Corporate Powers. The REIT (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, (ii) is duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction in which the nature of its business requires it to be so qualified, except for those jurisdictions where failure to so qualify and be in good standing would not have a Material Adverse Effect, and (iii) has all requisite corporate power and authority to own, operate and encumber its property and assets and to conduct its business as presently conducted and as

proposed to be conducted in connection with and following the consummation of the transactions contemplated by the Loan Documents.

(b) Authority. The REIT has the requisite corporate power and authority to execute, deliver and perform each of the Loan Documents to which it is or will be a party. The execution, delivery and performance thereof, and the consummation of the transactions contemplated thereby, have been duly approved by the Board of Directors of the REIT, and no other corporate proceedings on the part of the REIT are necessary to consummate such transactions. Each of the Loan Documents to which the REIT is a party has been duly executed and delivered by the REIT and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and general equitable principles.

(c) No Conflict. The execution, delivery and performance by the REIT of the Loan Documents to which it is a party, and each of the transactions contemplated thereby, do not and will not (i) conflict with or violate its Articles or Certificate of Incorporation or by-laws, or other organizational documents, as the case may be, or the organizational documents of Borrower or any Subsidiary, (ii) conflict with, result in a breach of or constitute (with or without notice or lapse of time or both) a default under any Requirement of Law, Contractual Obligation or Court Order of the REIT, Borrower or any Subsidiary, or require termination of any such Contractual Obligation, the consequences of which conflict or breach or default or termination will have a Material Adverse Effect, or result in or require the creation or imposition of any Lien whatsoever upon any of its Property, or (iii) require any approval of the stockholders of the REIT.

(d) Consents and Authorizations. The REIT has obtained all consents and authorizations required pursuant to its Contractual Obligations with any other Person, the failure of which to obtain would have a Material Adverse Effect, and has obtained all consents and authorizations of, and effected all notices to and filings with, any Governmental Authority necessary to allow the REIT to lawfully execute, deliver and perform its obligations under the Loan Documents to which the REIT is a party.

(e) Governmental Regulation. The REIT is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, the Investment Company Act of 1940 or any other federal or state statute or regulation such that its ability to incur indebtedness is limited or its ability to consummate the transactions contemplated by the Loan Documents is materially impaired.

(f) Capitalization. To the REIT's knowledge, all of the capital stock of the REIT has been issued in compliance with all applicable Requirements of Law.

(g) Litigation; Adverse Effects.

(i) There is no action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any Governmental Authority, pending, or to best of the REIT's knowledge, threatened against the REIT, any of its Subsidiaries or any of their respective Properties in which there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect; and

(ii) Neither the REIT nor any of its Subsidiaries is (A) in violation of any applicable Requirement of Law, which violation has a Material Adverse Effect, or (B) subject to or in default with respect to any Court Order which has a Material Adverse Effect.

(h) Payment of Taxes. All tax returns and reports to be filed by the REIT or any of its Subsidiaries have been timely filed, and all taxes, assessments, fees and other governmental charges shown on such returns have been paid when due and payable, except such taxes, if any, as are reserved against in accordance with GAAP, such taxes as are being contested in good faith by appropriate proceedings or such taxes, the failure to make payment of which when due and payable would not have, in the aggregate, a Material Adverse Effect. The REIT has no knowledge of any proposed tax assessment against the REIT or any of its Subsidiaries that would have a Material Adverse Effect, which is not being actively contested in good faith by the REIT or such Subsidiary.

(i) Material Adverse Agreements. The REIT is not a party to or subject to any Contractual Obligation or other restriction contained in its charter, by-laws, or similar governing documents which has a Material Adverse Effect.

(j) Performance. Neither the REIT nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Contractual Obligation applicable to it, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under such Contractual Obligation in each case, except where the consequences, direct or indirect, of such default or defaults, if any, would not have a Material Adverse Effect.

(k) Securities Activities. The REIT is not engaged principally in the business of extending credit for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U).

(l) Disclosure. The REIT has not intentionally or knowingly withheld any material fact from Agent in regard to any matter raised in the Loan Documents. Notwithstanding the foregoing, with respect to any projections of the REIT's future performance such representations and warranties are made in good faith and to the best judgment of the management of the REIT at the time such projections were made.

(m) Requirements of Law. To the REIT's knowledge, the REIT and each of its Subsidiaries are in compliance with all Requirements of Law (including without limitation the Securities Act and the Securities Exchange Act, and the applicable rules and regulations thereunder, state securities law and "Blue Sky" laws) applicable to them and their respective businesses, in each case, where the failure to so comply would have a Material Adverse Effect. After giving effect to all filings made simultaneously with the Closing Date, the REIT has made all filings with and obtained all consents of the Commission required under the Securities Act and the Securities Exchange Act in connection with the execution, delivery and performance by the REIT of the Loan Documents to which it is a party.

(n) Patents, Trademarks, Permits, Etc. The REIT and each of its Subsidiaries owns, is licensed or otherwise has the lawful right to use, or has all permits and other

governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes used in or necessary for the conduct of the REIT's or such Subsidiary's business as currently conducted, the absence of which would have a Material Adverse Effect. To the REIT's knowledge, the use of such permits and other governmental approvals, patents, trademarks, trade names, copyrights, technology, know-how and processes by the REIT or such Subsidiary does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, have a Material Adverse Effect.

(o) Environmental Matters. To the knowledge of the REIT, except as would not have a Material Adverse Effect and except as set forth on Schedule 5.01(r), (i) the Property and operations of the REIT and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws; (ii) none of the Property or operations of the REIT or any of its Subsidiaries are subject to any Remedial Action or other Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment or from the violation of any Environmental Laws, which Remedial Action or other Liabilities and Costs would have a Material Adverse Effect; (iii) neither the REIT nor any of its Subsidiaries has filed any notice under applicable Environmental Laws reporting a Release of a Contaminant into the environment in violation of any Environmental Laws, except as the same may have been heretofore remedied; (iv) there is not now, nor to the REIT's knowledge has there ever been, on or in the Property of the REIT or any of its Subsidiaries (except in compliance in all material respects with all applicable Environmental Laws): (A) any underground storage tanks, (B) any asbestos-containing material, (C) any polychlorinated biphenyls (PCB's) used in hydraulic oils, electrical transformers or other equipment, (D) any petroleum hydrocarbons or (E) any chlorinated or halogenated solvents; and (v) neither the REIT nor any of its Subsidiaries has received any notice or claim to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment.

(p) Solvency. The REIT is and will be Solvent after giving effect to the disbursement of the Loans and the payment of all fees then payable hereunder.

(q) Status as a REIT. The REIT (i) is a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereto), (ii) has not revoked its election to be a real estate investment trust, (iii) has not engaged in any "prohibited transactions" as defined in Section 856(b)(6)(iii) of the Internal Revenue Code (or any successor provision thereto), except for the transfer of manufactured home inventory from Borrower to Realty Systems, Inc., a Delaware corporation (provided that such transfer does not adversely affect the REIT's status as a real estate investment trust under the Internal Revenue Code), and (iv) for its current "tax year" (as defined in the Internal Revenue Code) is and for all prior tax years subsequent to its election to be a real estate investment trust has been entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code.

(r) Ownership. The REIT does not own any Property or have any interest in any Person, other than as set forth on Schedule 5.01(w).

(s) Listing. The common stock of the REIT is and will continue to be listed for trading and traded on either the New York Stock Exchange or American Stock Exchange.

ARTICLE VI.

REPORTING COVENANTS

Borrower covenants and agrees that, on and after the date hereof, until payment in full of all of the Obligations, the expiration of the Commitments and termination of this Agreement:

6.01 Financial Statements and Other Financial and Operating Information. Borrower shall maintain or cause to be maintained a system of accounting established and administered in accordance with sound business practices and consistent with past practice to permit preparation of quarterly and annual financial statements in conformity with GAAP. Borrower shall deliver or cause to be delivered to Agent with copies for each Lender:

(a) Quarterly Financial Statements Certified by CFO. As soon as practicable, and in any event within fifty (50) days after the end of each Fiscal Quarter, except the last Fiscal Quarter of a Fiscal Year, consolidated balance sheets, statements of income and expenses and statements of cash flow (collectively, "Financial Statements") for the REIT, on a consolidated basis, in the form provided to the Commission on the REIT's Form 10-Q and certified by the REIT's chief financial officer.

(b) Annual Financial Statements. Within one hundred and twenty (120) days after the close of each Fiscal Year, annual Financial Statements of the REIT, on a consolidated basis (in the form provided to the Commission on the REIT's Form 10K), audited and certified without qualification by the Accountants.

(c) Officer's Certificate of REIT. (i) Together with each delivery of any Financial Statement pursuant to clauses (a) and (b) above, an Officer's Certificate of the REIT, stating that (A) the executive officer who is the signatory thereto, which officer shall be the chief executive officer or the chief financial officer of the REIT, has reviewed, or caused under his supervision to be reviewed, the terms of this Agreement and the other Loan Documents, and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Borrower, the REIT, the Subsidiaries, and the Agreement Parties, during the accounting period covered by such Financial Statements, and that such review has not disclosed the existence during or at the end of such accounting period, and that the signer does not have knowledge of the existence as of the date of the Officer's Certificate, of any condition or event which constitutes an Event of Default or Unmatured Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action has been taken, is being taken and is proposed to be taken with respect thereto and (B) such Financial Statements have been prepared in accordance with the books and records of the REIT, on a consolidated basis, and fairly present the financial condition of the REIT, on a consolidated basis, at the date thereof (and, if applicable, subject to normal year-end adjustments) and the results of operations and cash flows, on a consolidated basis, for the period then ended; and (ii) together with each delivery pursuant to clauses (a) and (b) above, a compliance certificate demonstrating, in reasonable detail (which detail shall include actual calculations), compliance during and at the end of such accounting periods with the financial covenants contained in Sections 8.01(a), 8.01(d) and 8.02(a) and Article IX.

(d) Knowledge of Event of Default. Promptly upon Borrower obtaining knowledge (i) of any condition or event which constitutes an Event of Default or Unmatured Event of Default, or (ii) of any condition or event which has a Material Adverse Effect, an Officer's Certificate of the REIT specifying the nature and period of existence of any such condition or event and the nature of such claimed Event of Default, Unmatured Event of Default, event or condition, and what action Borrower, the REIT or the Agreement Party, as the case may be, has taken, is taking and proposes to take with respect thereto.

(e) Litigation, Arbitration or Government Investigation. Promptly upon Borrower obtaining knowledge of (i) the institution of, or threat of, any material action, suit, proceeding, governmental investigation or arbitration against or affecting Borrower, any Agreement Party, the REIT, any Subsidiary or any of their Property not previously disclosed in writing by Borrower to Agent pursuant to this Section 6.01(f), or (ii) any material development in any action, suit, proceeding, governmental investigation or arbitration already disclosed, in which, in either case, there is a reasonable possibility of an adverse decision that could have a Material Adverse Effect, a notice thereof to Agent and such other information as may be reasonably available to it to enable Agent and its counsel to evaluate such matters.

(f) Failure of the REIT to Qualify as Real Estate Investment Trust. Promptly upon, and in any event within forty- eight (48) hours after Borrower first has knowledge of (i) the REIT failing to continue to qualify as a real estate investment trust as defined in Section 856 of the Internal Revenue Code (or any successor provision thereof), (ii) any act by the REIT causing its election to be taxed as a real estate investment trust to be terminated, (iii) any act causing the REIT to be subject to the taxes imposed by Section 857(b)(6) of the Internal Revenue Code (or any successor provision thereto), (iv) the REIT failing to be entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code, or (v) any challenge by the IRS to the REIT's status as a real estate investment trust, a notice of any such occurrence or circumstance.

(g) Management Reports. Upon and after the occurrence of an Event of Default, copies of any management reports prepared by the Accountants as soon as available.

(h) Property Changes. Notice of any material acquisition, disposition, merger, or purchase by the REIT, Borrower, any Subsidiary or any Agreement Party no later than ten (10) days after the consummation thereof, specifying the nature of the transaction in reasonable detail.

(i) Other Information. Such other information, reports, contracts, schedules, lists, documents, agreements and instruments in the possession of the REIT, Borrower, any Subsidiary, or any Agreement Party with respect to the business, financial condition, operations, performance, or properties of Borrower, the REIT, any Subsidiary, or any Agreement Party, as Agent may, from time to time, reasonably request, including without limitation, annual information with respect to cash flow projections, budgets, operating statements (current year and immediately preceding year), rent rolls, lease expiration reports, leasing status reports, note payable summaries, bullet note summaries, equity funding requirements, contingent liability summaries, line of credit summaries, line of credit collateral summaries, wrap note or note receivable summaries, schedules of outstanding letters of credit, summaries of cash and Cash Equivalents, projections of management and leasing fees and overhead budgets, each in the form

customarily prepared by the REIT or Borrower. If Borrower fails to provide Agent with information requested from Borrower within the time periods provided for herein, or if no time periods are provided for, within ten (10) Business Days after Agent requests such information, and provided that Agent gives Borrower reasonable prior notice and an opportunity to participate, Borrower hereby authorizes Agent to communicate with the Accountants and authorizes the Accountants to disclose to Agent any and all financial statements and other information of any kind, including copies of any management letter or the substance of any oral information, that such Accountants may have with respect to the financial condition, operations, properties, performance and prospects of Borrower, the REIT, any Subsidiary, or any Agreement Party. Concurrently therewith, Agent will notify Borrower of any such communication. At Agent's request, Borrower shall deliver a letter addressed to the Accountants instructing them to disclose such information in compliance with this Section 6.01(s).

6.02 Press Releases; SEC Filings and Financial Statements. The REIT and Borrower will deliver to the Agent as soon as practicable after public release all press releases concerning the REIT or Borrower. The REIT and Borrower will deliver to Agent as soon as practicable after filing with the Commission, all reports and notices, proxy statements, registration statements and prospectuses. All materials sent or made available generally by the REIT to the holders of its publicly-held Securities or to a trustee under any indenture or filed with the Commission, including all periodic reports required to be filed with the Commission, will be delivered to Agent as soon as available.

6.03 Environmental Notices. Except for events or occurrences that will not result in a Material Adverse Effect, Borrower shall notify Agent, in writing, as soon as practicable, and in any event within ten (10) days after Borrower's learning thereof, of any: (a) written notice or claim to the effect that Borrower, any Agreement Party, the REIT, or any Subsidiary is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant into the environment; (b) written notice that Borrower, any Agreement Party, the REIT, or any Subsidiary is subject to investigation by any Governmental Authority evaluating whether any Remedial Action is needed to respond to the Release or threatened Release of any Contaminant into the environment; (c) written notice that any Property of Borrower, any Agreement Party, the REIT, or any Subsidiary is subject to an Environmental Lien; (d) written notice of violation to Borrower, any Agreement Party, the REIT, or any REIT Subsidiary or awareness of a condition which might reasonably result in a notice of violation of any Environmental Laws by Borrower, the REIT, any REIT Subsidiary or any Agreement Party; (e) commencement or written threat of any judicial or administrative proceeding alleging a violation by Borrower, the REIT, any Subsidiary or any Agreement Party of any Environmental Laws; or (f) written notice received directly from a Governmental Authority of any changes to any existing Environmental Laws.

6.04 Qualifying Unencumbered Properties. Borrower may from time to time but no more frequently than quarterly deliver notice to the Agent stating that Borrower intends to designate a Property to become a Qualifying Unencumbered Property. Such notice shall (i) set forth the name of such Property (or, if such Property has no name, such notice shall otherwise identify such Property), and (ii) be accompanied by a statement of income, certified by the chief financial officer of the REIT, for each such Property for the then most recently completed Fiscal Quarter (or, if such statement of income is unavailable, a pro forma financial statement setting forth the Net Operating Income with respect to such Property for the then current Fiscal Quarter).

If any such Property meets the requirements set forth in the definition of "Qualifying Unencumbered Properties" and the Agent fails to deliver written notice to Borrower stating that the Requisite Lenders have disapproved the designation of such Property as a Qualifying Unencumbered Property (it being understood that such notice shall provide Borrower with information regarding why such designation was disapproved by the Requisite Lenders and that the Requisite Lenders will not unreasonably disapprove such designation) within twenty (20) days after receipt of such information by Agent, such Property shall become a Qualifying Unencumbered Property.

#### ARTICLE VII.

##### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, on and after the date hereof, until payment in full of all of the Obligations, the expiration of the Commitments and termination of this Agreement:

7.01 With respect to Borrower:

(a) Existence. Borrower shall, and shall cause each of its Subsidiaries to, at all times maintain its and their respective partnership limited liability company, trust or corporate existence, as applicable, and preserve and keep in full force and effect its and their respective rights and franchises unless the failure to maintain such rights and franchises does not have a Material Adverse Effect. Borrower shall maintain its status as a limited partnership.

(b) Qualification. Borrower shall, and shall cause each of its Subsidiaries to, qualify and remain qualified to do business in each jurisdiction in which the nature of its and their businesses require them to be so qualified except for those jurisdictions where failure to so qualify does not have a Material Adverse Effect.

(c) Compliance with Laws, Etc. Borrower shall, and shall cause each of its Subsidiaries to, (i) comply with all Requirements of Law and Contractual Obligations, and all restrictive covenants affecting Borrower and its Subsidiaries or their respective properties, performance, assets or operations, and (ii) obtain as needed all Permits necessary for its and their respective operations and maintain such in good standing, except in each of the foregoing cases where the failure to do so will not have a Material Adverse Effect or expose Agent or Lenders to any material liability therefor.

(d) Payment of Taxes and Claims. (a) Borrower shall, and shall cause each of its Subsidiaries to, pay (i) all taxes, assessments and other governmental charges imposed upon it or them or on any of its or their respective properties or assets or in respect of any of its or their respective franchises, business, income or property before any penalty or interest accrues thereon, the failure to make payment of which in such time periods would have a Material Adverse Effect, and (ii) all claims (including, without limitation, claims for labor, services, materials and supplies) which have become due and payable and which by law have or may become a Lien (other than a Permitted Lien) upon any of its or their respective properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, the failure to make payment of which would have a Material Adverse Effect; provided, however, that no such taxes, assessments, and governmental charges referred to in clause (i) above or



claims referred to in clause (ii) above need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if adequate reserves shall have been set aside therefor in accordance with GAAP.

(e) Maintenance of Properties; Insurance. Borrower shall, and shall cause each of its Subsidiaries to, maintain in good repair, working order and condition, excepting ordinary wear and tear, all of its and their respective Property (personal and real) and will make or cause to be made all appropriate repairs, renewals and replacements thereof, in each case where the failure to so maintain, repair, renew or replace would have a Material Adverse Effect. Borrower shall, and shall cause each of its Subsidiaries to, maintain with insurance companies that have a Best Rating of "A- VII" or higher or other insurance companies reasonably acceptable to Agent that have similar financial resources and stability, which companies shall be qualified to do business in the states where such Property is located, the insurance policies and programs reasonably acceptable to Agent insuring all property and assets material to the operations of Borrower and each of its Subsidiaries against loss or damage by fire, theft, burglary, pilferage and loss in transit and business interruption, together with such other hazards as is reasonably consistent with prudent industry practice, and maintain liability insurance consistent with prudent industry practice with financially sound insurance companies qualified to do business in the states where such Property is located. The insurance policies shall provide that they cannot be terminated or materially modified unless Agent receives thirty (30) days prior written notice of said termination or modification. At Agent's reasonable request, Borrower shall furnish evidence of replacement costs, without cost to Agent, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the improvements on any Property of Borrower or any of its Subsidiaries. In the event Borrower fails to cause insurance to be carried as aforesaid, Agent shall have the right (but not the obligation), with the consent of Requisite Lenders, to place and maintain insurance required to be maintained hereunder and treat the amounts expended therefor as additional Obligations, payable on demand; provided however, that Agent shall give Borrower five (5) days' prior notice of Agent's intent to place or maintain such insurance during which time Borrower shall have the opportunity to obtain such insurance. All of the insurance policies required hereunder shall be in form and substance reasonably satisfactory to Agent. Agent hereby agrees that Borrower may use blanket policies to satisfy the requirements of this Section 7.01(e), approves the issuer, form and content of all insurance policies currently carried by Borrower and agrees that such insurance satisfies the requirements of this Section 7.01(e). Furthermore, Agent agrees that it will not be unreasonable in exercising any right hereunder to require Borrower to modify, alter or supplement its insurance policies or coverage or in exercising any right it may have hereunder to approve any changes Borrower may hereafter make with respect to its insurance.

(f) Inspection of Property; Books and Records. Borrower shall permit and shall cause each of the REIT, each Subsidiary, and each Agreement Party to, upon reasonable prior notice by Agent to Borrower, permit any authorized representative(s) designated by Agent to visit and inspect any of its properties including inspection of financial and accounting records and leases, and to make copies and take extracts therefrom, all at such times during normal business hours and as often as Agent may reasonably request. In connection therewith, Borrower shall pay all reasonable expenses of the types described in Section 12.01. Borrower shall keep, and shall cause each of, the REIT, each Subsidiary and each Agreement Party to keep proper books of record and account in conformity with GAAP, as modified and as otherwise required by this Agreement and applicable Requirements of Law.

(g) Maintenance of Licenses, Permits, Etc. Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect all licenses, permits, governmental approvals, franchises, patents, trademarks, trade names, copyrights, authorizations or other rights necessary for the operation of their respective businesses, except where the failure to obtain any of the foregoing would not have a Material Adverse Effect; and notify Agent in writing, promptly after learning thereof, of the suspension, cancellation, revocation or discontinuance of or of any pending or threatened action or proceeding seeking to suspend, cancel, revoke or discontinue any such material license, permit, patent, trademark, trade name, copyright, governmental approval, franchise authorization or right, except where the suspension, cancellation, revocation or discontinuance would not have a Material Adverse Effect.

(h) Conduct of Business. Except for Permitted Holdings and other investments permitted under Section 8.01(c), Borrower shall engage only in the business of owning, operating, managing and developing manufactured home communities, whether directly or through its Subsidiaries.

(i) Use of Proceeds. Borrower shall use the proceeds of each Loan only for general partnership purposes in accordance with the provisions of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, no Swingline Loan shall be used more than once for the purpose of refinancing another Swingline Loan, in whole or part.

(j) Further Assurance. Borrower shall take and shall cause its Subsidiaries and each Agreement Party to take all such further actions and execute all such further documents and instruments as Agent may at any time reasonably determine to be necessary or advisable to (i) correct any technical defect or technical error that may be discovered in any Loan Document or in the execution, acknowledgment or recordation thereof, and (ii) cause the execution, delivery and performance of the Loan Documents to be duly authorized.

7.02 With respect to the REIT:

(a) Corporate Existence. The REIT shall, and shall cause each of its Subsidiaries to, at all times maintain its and their respective partnership or corporate existence, as applicable, and preserve and keep in full force and effect its and their respective rights and franchises unless the failure to maintain such rights and franchises will not have a Material Adverse Effect.

(b) Qualification, Name. The REIT shall, and shall cause each of its Subsidiaries to, qualify and remain qualified to do business in each jurisdiction in which the nature of its and their businesses requires them to be so qualified except for those jurisdictions where failure to so qualify does not have a Material Adverse Effect. The REIT will transact business solely in its or its Subsidiaries' own name.

(c) Securities Law Compliance. The REIT shall comply in all material respects with all rules and regulations of the Commission and file all reports required by the Commission relating to the REIT's publicly-held Securities.

(d) Continued Status as a REIT; Prohibited Transactions. The REIT (i) will continue to be a real estate investment trust as defined in Section 856 of the Internal Revenue

Code (or any successor provision thereto), (ii) will not revoke its election to be a real estate investment trust, (iii) will not engage in any "prohibited transactions" as defined in Section 856(b)(6)(iii) of the Internal Revenue Code (or any successor provision thereto), and (iv) will do all acts necessary to continue to be entitled to a dividend paid deduction meeting the requirements of Section 857 of the Internal Revenue Code.

(e) NYSE or ASE Listed Company. The REIT shall cause its common stock at all times to be listed for trading and be traded on the New York Stock Exchange or American Stock Exchange.

(f) Compliance with Laws, Etc. The REIT shall, and shall cause each of its Subsidiaries to, (i) comply with all Requirements of Law and Contractual Obligations, and all restrictive covenants affecting the REIT and its Subsidiaries or their respective properties, performance, prospects, assets or operations, and (ii) obtain as needed all Permits necessary for its and their respective operations and maintain such in good standing, except in each of the foregoing cases where the failure to do so will not have a Material Adverse Effect.

(g) Payment of Taxes and Claims. Subject to Section 7.02(d), the REIT shall, and shall cause each of its Subsidiaries to, pay (i) all taxes, assessments and other governmental charges imposed upon it or them or on any of its or their respective properties or assets or in respect of any of its or their respective franchises, business, income or property before any penalty or interest accrues thereon, the failure to make payment of which would have a Material Adverse Effect, and (ii) all claims (including, without limitation, claims for labor, services, materials and supplies) which have become due and payable and which by law have or may become a Lien (other than a Permitted Lien) upon any of its or their respective properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, the failure to make payment of which would have a Material Adverse Effect; provided, however, that no such taxes, assessments, and governmental charges referred to in clause (i) above or claims referred to in clause (ii) above need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if adequate reserves shall have been set aside therefor in accordance with GAAP.

#### ARTICLE VIII.

##### NEGATIVE COVENANTS

Borrower and the REIT covenant and agree that, on and after the date hereof, until payment in full of all of the Obligations, the expiration of the Commitments and termination of this Agreement:

8.01 With respect to Borrower:

(a) Indebtedness. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) the Obligations;

(ii) trade debt incurred in the normal course of business;

(iii) intercompany payables and receivables owing between Subsidiaries in the nature of trade debt incurred in the normal course of business; and

(iv) Indebtedness which, after giving effect thereto, may be incurred or may remain outstanding without giving rise to an Event of Default or Unmatured Event of Default under any provision of Articles VIII and IX; provided, however, that (A) the Borrower shall not, and shall not permit any of its Subsidiaries to, guarantee or otherwise become or remain directly or indirectly liable with respect to the Indebtedness of any Investment Affiliate, and (B) Borrower shall not permit any Subsidiary to create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Recourse Indebtedness in excess of Ten Million Dollars (\$10,000,000) per Subsidiary at any time or Thirty Million Dollars (\$30,000,000) in the aggregate for all Subsidiaries at any time.

(b) Liens. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of its Property, except:

(i) Permitted Liens; and

(ii) Liens securing Indebtedness permitted to be incurred and remain outstanding pursuant to Section 8.01(a)(iv).

(c) Investments. Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or own any Investment except:

(i) Investments in cash and Cash Equivalents;

(ii) Permitted Holdings;

(iii) Investments in Subsidiaries and Investment Affiliates owned as of the Closing Date;

(iv) Investments permitted pursuant to Section 8.01(e)(v).

(v) Controlled Ownership Interests which do not constitute Non-Manufactured Home Community Property; and

(vi) mortgage loans which do not constitute Non-Manufactured Home Community Property and which are either eliminated in the consolidation of the REIT, Borrower and the Subsidiaries or are accounted for as investments in real estate under GAAP.

(d) Distributions and Dividends. Neither Borrower nor the REIT shall declare or make any dividend or other distribution on account of partnership interests in excess of ninety-five percent (95%) of Funds From Operations in any Fiscal Year; provided, however, that if an Event of Default under Section 10.01(a) shall have occurred, neither Borrower nor the REIT shall declare or make any dividend or other distribution on account of partnership interests

in excess of what is required for the REIT to maintain its status as a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(e) Restrictions on Fundamental Changes.

(i) Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any merger, consolidation, reorganization or recapitalization or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), or discontinue its business.

(ii) Borrower shall remain a limited partnership with the REIT as its sole general partner.

(iii) Borrower shall not change its Fiscal Year.

(iv) Except for Permitted Holdings and other Investments permitted under Section 8.01(c), Borrower shall not engage in any line of business other than ownership, operation, management and development of manufactured home communities and the provision of services incidental thereto and the brokerage, purchase, and sale of manufactured home units, whether directly or through its Subsidiaries and Investment Affiliates.

(v) Borrower shall not acquire by purchase or otherwise all or substantially all of the business, property or assets of, or stock or other evidence of beneficial ownership of, any Person, unless after giving effect thereto, Borrower is in pro forma compliance with this Agreement.

(f) ERISA. Neither Borrower nor the REIT shall, and neither shall permit any Subsidiary or any of their ERISA Affiliates to, do any of the following to the extent that such act or failure to act would result in the aggregate, after taking into account any other such acts or failure to act, in a Material Adverse Effect:

(i) Engage, or knowingly permit a Subsidiary or an ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code which is not exempt under Section 407 or 408 of ERISA or Section 4975(d) of the Internal Revenue Code for which a class exemption is not available or a private exemption has not been previously obtained from the DOL;

(ii) Permit to exist any accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code), whether or not waived;

(iii) Fail, or permit a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary to fail, to pay timely required contributions or annual installments due with respect to any waived funding deficiency to any Plan if such failure could result in the imposition of a Lien or otherwise would have a Material Adverse Effect;

(iv) Terminate, or permit an ERISA Affiliate of the REIT, Borrower or any Subsidiary to terminate, any Benefit Plan which would result in any liability of Borrower or a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary under Title IV of ERISA; or

(v) Fail, or permit any Subsidiary or ERISA Affiliate to fail to pay any required installment under section (m) of Section 412 of the Internal Revenue Code or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment, if such failure could result in the imposition of a Lien or otherwise would have a Material Adverse Effect; or

(vi) Permit to exist any Termination Event;

(vii) Make, or permit a Subsidiary or an ERISA Affiliate of the REIT, Borrower or any Subsidiary to make, a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in liability to Borrower, a Subsidiary or any ERISA Affiliate of the REIT, Borrower or any Subsidiary which would have a Material Adverse Effect; or

(viii) Permit the total Unfunded Pension Liabilities (using the actuarial assumptions utilized by the PBGC) for all Benefit Plans (other than Benefit Plans which have no Unfunded Pension Liabilities) to have a Material Adverse Effect.

None of the REIT, Borrower nor any Agreement Party shall use any "assets" (within the meaning of ERISA or Section 4975 of the Internal Revenue Code, including but not limited to 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code to repay or secure the Obligations if the use of such assets may result in a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or in a Lender, Agent or the Lenders being deemed in violation of Section 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or otherwise by itself results in or will result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975 (e) (2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code. Without limitation of any other provision of this Agreement, none of the REIT, Borrower or any Agreement Party shall assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of their respective interests or rights (direct or indirect) in any Loan Document, or attempt to do any of the foregoing or suffer any of the foregoing, or permit any party with a direct or indirect interest or right in any Loan Document to do any of the foregoing, nor shall the REIT or Borrower assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of any of their respective rights or interests (direct or indirect) in any Agreement Party, Borrower or the REIT, as applicable, or attempt to do any of the foregoing or suffer any of the foregoing, if such action would cause the Obligations, or the exercise of any of the Agent's or Lenders' rights in connection therewith, to constitute a prohibited transaction under ERISA or the Internal Revenue

Code (unless Borrower furnishes to Agent a legal opinion reasonably satisfactory to Agent that the transaction is exempt from the prohibited transaction provisions of ERISA and the Internal Revenue Code (for this purpose, Agent and the Lenders agree to supply Borrower all relevant non-confidential factual information reasonably necessary to such legal opinion and reasonably requested by Borrower)) or otherwise results in a Lender, Agent or the Lenders being deemed in violation of Sections 404 or 406 of ERISA or Section 4975 of the Internal Revenue Code or otherwise by itself would result in a Lender, Agent or the Lenders being a fiduciary or party in interest under ERISA or a "disqualified person" as defined in Section 4975(e)(2) of the Internal Revenue Code with respect to an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code.

(g) Environmental Liabilities. Borrower shall not, and shall not permit any of its Subsidiaries to, become subject to any Liabilities and Costs which would have a Material Adverse Effect arising out of or related to (i) the Release or threatened Release of any Contaminant into the environment, or any Remedial Action in response thereto, or (ii) any violation of any Environmental Laws. Notwithstanding the foregoing provision, Borrower and its Subsidiaries shall have the right to contest in good faith any claim of violation of an Environmental Law by appropriate legal proceedings and shall be entitled to postpone compliance with the obligation being contested as long as (i) no Event of Default shall have occurred and be continuing, (ii) Borrower shall have given Agent prior written notice of the commencement of such contest, (iii) noncompliance with such Environmental Law shall not subject Borrower or such Subsidiary to any criminal penalty or subject Agent to pay any civil penalty or to prosecution for a crime, and (iv) no portion of any Property material to Borrower or its condition or prospects shall be in imminent danger of being sold, forfeited or lost, by reason of such contest or the continued existence of the matter being contested.

(h) Amendment of Constituent Documents. Borrower shall not permit any amendment of its limited partnership agreement, certificate of limited partnership or by-laws, if any, which would materially and adversely affect Agent or Lenders or their respective rights and remedies under the Loan Documents.

(i) Disposal of Interests. Borrower will not directly or indirectly convey, sell, transfer, assign, pledge or otherwise encumber or dispose of any material portion of its partnership interests, stock or other ownership interests in any Subsidiary or other Person in which it has an interest unless Borrower has delivered to Agent a Compliance Certificate showing on a pro forma basis (calculated in a manner reasonably acceptable to Agent) that there would be no breach of any of the financial covenants contained in Articles VIII and XI after giving effect to such conveyance, sale, transfer, assignment, pledge, or other encumbrance or disposition.

(j) Margin Regulations. No portion of the proceeds of any credit extended under this Agreement shall be used in any manner which might cause the extension of credit or the application of such proceeds to violate Regulation U or Regulation X or any other regulation of the Federal Reserve Board or to violate the Securities Exchange Act or the Securities Act, in each case as in effect on the date or dates of Borrowings and such use of proceeds.

(k) Transactions with Affiliates. Borrower shall not and shall not permit any of its Subsidiaries to enter into, any transaction or series of related transactions with any Affiliate

of Borrower, other than transactions in the ordinary course of business which are on terms and conditions substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary in an arms-length transaction with a Person other than an Affiliate.

8.02 With respect to the REIT:

(a) Indebtedness. The REIT shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) the Obligations; and

(ii) Indebtedness which, after giving effect thereto, may be incurred or may remain outstanding without giving rise to an Event of Default or Unmatured Event of Default under any provision of Articles VIII and IX; provided, however, that (A) the REIT shall not, and shall not permit any of its Subsidiaries to, guarantee or otherwise become or remain directly or indirectly liable with respect to the Indebtedness of any Investment Affiliate, and (B) the REIT shall not permit any Subsidiary to create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Recourse Indebtedness in excess of Ten Million Dollars (\$10,000,000) per Subsidiary at any time or Thirty Million Dollars (\$30,000,000) in the aggregate for all Subsidiaries at any time.

(b) Liens. The REIT shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of its Property, except:

(i) Permitted Liens; and

(ii) Liens securing Indebtedness permitted to be incurred and remain outstanding pursuant to Section 8.02(a)(ii).

(c) Restriction on Fundamental Changes.

(i) The REIT shall not enter into any merger, consolidation, reorganization or recapitalization or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution) or discontinue its business.

(ii) The REIT shall not change its Fiscal Year.

(iii) The REIT shall not engage in any line of business other than owning partnership interests in Borrower and the interests identified on Schedule 5.01(w) as being owned by the REIT and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(iv) The REIT shall not have an Investment in any Person other than Borrower and the interests identified on Schedule 5.01(w) as being owned by the



REIT and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(v) The REIT shall not acquire an interest in any Property other than Securities issued by Borrower and the interests identified on Schedule 5.01(w) and any other ownership interests in Subsidiaries and Investment Affiliates which are permitted under the terms of Borrower's partnership agreement.

(d) Environmental Liabilities. The REIT shall not, and shall not permit any of its Subsidiaries to become subject to any Liabilities and Costs which would have a Material Adverse Effect arising out of or related to (i) the Release or threatened Release of any Contaminant into the environment, or any Remedial Action in response thereto, or (ii) any violation of any Environmental Laws. Notwithstanding the foregoing provision, the REIT and its Subsidiaries shall have the right to contest in good faith any claim of violation of an Environmental Law by appropriate legal proceedings and shall be entitled to postpone compliance with the obligation being contested as long as (i) no Event of Default shall have occurred and be continuing, (ii) the REIT shall have given Agent prior written notice of the commencement of such contest, (iii) noncompliance with such Environmental Law shall not subject the REIT or such Subsidiary to any criminal penalty or subject Agent to pay any civil penalty or to prosecution for a crime, and (iv) no portion of any Property material to Borrower or its condition or prospects shall be in imminent danger of being sold, forfeited or lost, by reason of such contest or the continued existence of the matter being contested.

(e) Amendment of Charter or By-Laws. The REIT shall not permit any amendment of its charter documents or by-laws, which would materially and adversely affect Agent or Lenders or their respective rights and remedies under the Loan Documents.

(f) Disposal of Partnership Interests. The REIT will not directly or indirectly convey, sell, transfer, assign, pledge or otherwise encumber or dispose of any of its partnership interests in Borrower.

(g) Maximum Ownership Interests. No Person or group of Persons (within the meaning of Section 13 or 14 of the Securities Exchange Act) (other than Samuel Zell) shall beneficially acquire ownership (within the meaning of Rule 13d-3 promulgated by the Commission under such Act), directly or indirectly, of more than fifteen percent (15%) of the Securities which have the right to elect the board of directors of the REIT under ordinary circumstances on a combined basis, after giving effect to the conversion of any Convertible Securities in the REIT and Borrower.

#### ARTICLE IX.

##### FINANCIAL COVENANTS

Borrower covenants and agrees that, on and after the date of this Agreement and until payment in full of all the Obligations, the expiration of all Commitments and the termination of this Agreement:

9.01 Total Liabilities to Gross Asset Value. Borrower shall not permit the ratio of Total Liabilities to the sum of Gross Asset Values for Borrower and each of its Subsidiaries to exceed 0.6:1.

9.02 Secured Debt to Gross Asset Value. Borrower shall not permit the ratio of Secured Debt to the sum of Gross Asset Values for Borrower and each of its Subsidiaries to exceed 0.50:1.

9.03 EBITDA to Interest Expense Ratio. Borrower shall not permit the ratio of EBITDA for any Fiscal Quarter to Interest Expense for such Fiscal Quarter to be less than 2.0:1.

9.04 EBITDA to Fixed Charges Ratio. Borrower shall not permit the ratio of EBITDA for any Fiscal Quarter to Fixed Charges for such Fiscal Quarter to be less than 1.75:1.

9.05 Unencumbered Net Operating Income to Unsecured Interest Expense. Borrower shall not permit the ratio of Unencumbered Net Operating Income for any Fiscal Quarter to Unsecured Interest Expense for such Fiscal Quarter to be less than 1.80:1.

9.06 Unencumbered Pool. Borrower shall not permit the ratio of (a) the sum of (i) the Unencumbered Asset Value and (ii) the fair market value of cash and Cash Equivalents owned collectively by Borrower and any Wholly-Owned Subsidiary and subject to no Lien to (b) outstanding Unsecured Debt to be less than 1.80:1.

9.07 Minimum Net Worth. Borrower will maintain a Net Worth of not less than the Minimum Net Worth.

9.08 Permitted Holdings. Borrower's primary business will be the ownership, operation, management and development of manufactured home communities and any other business activities of Borrower and its Subsidiaries will remain incidental thereto. Notwithstanding the foregoing, Borrower and its Subsidiaries may acquire, or maintain or engage in the following Permitted Holdings if and so long as (i) the aggregate value of such Permitted Holdings, whether held directly or indirectly by Borrower and its Subsidiaries, does not exceed, at any time, twenty percent (20%) of Gross Asset Value for Borrower as a whole and (ii) the value of each such Permitted Holding, whether held directly or indirectly by Borrower and its Subsidiaries, does not exceed, at any time, the following percentages of Borrower's Gross Asset Value:

Permitted Holdings -----	Maximum Percentage of Gross Asset Value -----
Non-Manufactured Home Community Property (other than cash or Cash Equivalents)	10%
Land	5%
Securities issued by real estate investment trusts primarily engaged in the development, ownership, operation and	

management of manufactured home communities	5%
Manufactured Home Community Mortgages other than mortgage indebtedness which is either eliminated in the consolidation of the REIT, Borrower and the Subsidiaries or accounted for as investments in real estate under GAAP	10%
Manufactured Home Community Ownership Interests other than Controlled Ownership Interests	10%
Development Activity	10%
Taxable REIT Subsidiary Interests	5%

The value of the foregoing categories of Permitted Holdings shall be calculated as follows: (i) the value of any Non-Manufactured Home Community Property (other than cash or Cash Equivalents) or any Manufactured Home Community Ownership Interest (other than a Controlled Ownership Interest) shall be calculated based upon its Adjusted Asset Value; (ii) the value of any Land or any Security issued by a real estate investment trust primarily engaged in the development, ownership, operation and management of manufactured home communities shall be equal to the lesser of (A) the acquisition cost thereof or (B) the current market value thereof (such market value to be determined in a manner reasonably acceptable to Agent); (iii) the value of any Taxable REIT Subsidiary Interest shall be the acquisition or investment cost thereof; (iv) the value of any Manufactured Home Community Mortgage (other than mortgage indebtedness which is either eliminated in the consolidation of the REIT, Borrower and the Subsidiaries or accounted for as an investment in real estate under GAAP) shall be equal to the book value thereof; (v) the value of Development Activity by Borrower or any Subsidiary shall be equal to the full budgeted cost thereof; and (vi) the value of any Development Activity by an Investment Affiliate shall be equal to the greater of (A) Borrower's pro rata share of the full budgeted cost thereof based upon its percentage of equity ownership, or (B) Borrower's pro rata share of the full budgeted cost thereof based upon Borrower's economic interest in the project (as determined by Borrower in a manner reasonably satisfactory to Agent).

9.09 Calculation. Each of the foregoing ratios and financial requirements shall be calculated as of the last day of each Fiscal Quarter, but shall be satisfied at all times.

ARTICLE X.  
EVENTS OF DEFAULT; RIGHTS AND REMEDIES

10.01 Events of Default. Each of the following occurrences shall constitute an Event of Default under this Agreement:

(a) Failure to Make Payments When Due. (i) The failure to pay in full any amount due on the Termination Date; (ii) the failure to pay in full any principal when due; (iii) the failure to pay in full any interest owing hereunder or under any of the other Loan Documents within ten (10) days after the due date thereof and, unless Agent has previously delivered two (2) or more notices of payment default to Borrower during the term of this Agreement (in which event the following notice shall not be required), Agent shall have given Borrower written notice that Agent has not received such payment on or before the date such payment was required to be made and Borrower shall have failed to make such payment within five (5) days after receipt of such notice; or (iv) the failure to pay in full any other payment required hereunder or under any of the other Loan Documents, whether such payment is required to be made to Agent or to some other Person, within ten (10) days after Agent gives Borrower written notice that such payment is due and unpaid.

(b) Dividends. Borrower or the REIT shall breach the covenant set forth in Section 8.01(d).

(c) Breach of Financial Covenants. Borrower shall fail to satisfy any covenant set forth in Article IX and such failure shall continue for forty (40) days after Borrower's knowledge thereof.

(d) Other Defaults. Borrower, the REIT or any Agreement Party shall fail duly and punctually to perform or observe any agreement, covenant or obligation binding on Borrower, the REIT or any Agreement Party under this Agreement or under any of the other Loan Documents (other than as described in Section 7.01(e) or Sections 10.01(a), (b), (c), (e), (g) or (p)), and such failure shall continue for thirty (30) days after written notice from Agent to Borrower, the REIT or any Agreement Party (or (i) such lesser period of time as is mandated by applicable Requirements of Law or (ii) such longer period of time (but in no case more than ninety (90) days) as is reasonably required to cure such failure if Borrower, the REIT, or such Agreement Party commences such cure within such ninety (90) days and diligently pursues the completion thereof).

(e) Breach of Representation or Warranty. Any representation or warranty made or deemed made by Borrower, the REIT or any Agreement Party to Agent or any Lender herein or in any of the other Loan Documents or in any statement, certificate or financial statements at any time given by Borrower pursuant to any of the Loan Documents shall be false or misleading in any material respect on the date as of which made and, with respect to any such representation or warranty not known by Borrower at the time made or deemed made to be false or misleading, the defect causing such representation or warranty to be false or misleading is not removed within thirty (30) days after written notice thereof from Agent to Borrower.

(f) Default as to Other Indebtedness. Borrower, the REIT, any Subsidiary or any Investment Affiliate shall have defaulted under any Other Indebtedness of such party (other than Non-Recourse Indebtedness) and as a result thereof the holders of such Other Indebtedness shall have accelerated such Other Indebtedness (other than Non-Recourse Indebtedness), if the aggregate amount of such accelerated Other Indebtedness (to the extent of any recourse to Borrower, the REIT or any Subsidiary), together with the aggregate amount of any Other Indebtedness (other than Non-Recourse Indebtedness) of Borrower, the REIT, any Subsidiary or

any Investment Affiliate which has theretofore been accelerated (to the extent of any recourse to Borrower, the REIT or any Subsidiary) is \$10,000,000 or more.

(g) Involuntary Bankruptcy; Appointment of Receiver, etc.

(i) An involuntary case or other proceeding shall be commenced against the REIT, Borrower, any Subsidiary, or any Agreement Party and the petition shall not be dismissed within sixty (60) days after commencement of the case, or a court having jurisdiction shall enter a decree or order for relief in respect of the REIT, Borrower, any Subsidiary, or any Agreement Party, as the case may be, in an involuntary case or other proceeding, under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or any other similar relief shall be granted under any applicable federal, state or foreign law; or

(ii) A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, the REIT, any Subsidiary, or any Agreement Party, or over all or a substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be entered, or an interim receiver, trustee or other custodian of the REIT, Borrower, any Subsidiary, or any Agreement Party, or of all or a substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be appointed or a warrant of attachment, execution or similar process against any substantial part of the property of the REIT, Borrower, any Subsidiary, or any Agreement Party shall be issued and any such event shall not be stayed, vacated, dismissed, bonded or discharged within sixty (60) days of entry, appointment or issuance.

(h) Voluntary Bankruptcy; Appointment of Receiver, etc. The REIT, Borrower, any Subsidiary, or any Agreement Party shall have an order for relief entered with respect to it or commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking of possession by a receiver, trustee or other custodian for all or a substantial part of its property; the REIT, Borrower, any Subsidiary, or any Agreement Party shall make any assignment for the benefit of creditors or shall be unable or fail, or admit in writing its inability, to pay its debts as such debts become due; or the general partner(s) or Board of Directors (or any committee thereof), as applicable, of the REIT, Borrower, any Subsidiary, or any Agreement Party adopts any resolution or otherwise authorizes any action to approve any of the foregoing.

(i) Judgments and Attachments. (i) Any money judgments (other than a money judgment covered by insurance but only if the insurer has admitted liability with respect to such money judgment), writs or warrants of attachment, or similar processes involving an aggregate amount in excess of \$5,000,000 shall be entered or filed against the REIT,

Borrower, any Subsidiary, or any Agreement Party or their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days, or (ii) any judgment or order of any court or administrative agency awarding material damages shall be entered against the REIT, Borrower, any Subsidiary, or any Agreement Party in any action under the Federal securities laws seeking rescission of the purchase or sale of, or for damages arising from the purchase or sale of, any Securities, such judgment or order shall have become final after exhaustion of all available appellate remedies and such judgment or order would have a Material Adverse Effect.

(j) Dissolution. Any order, judgment or decree shall be entered against the REIT, Borrower, or any Agreement Party decreeing its involuntary dissolution or split up and such order shall remain undischarged and unstayed for a period in excess of thirty (30) days; or the REIT, Borrower, or any Agreement Party shall otherwise dissolve or cease to exist.

(k) Loan Documents; Failure of Security or Subordination. Any Loan Document shall cease to be in full force and effect or any Obligation shall be subordinated or shall not have the priority contemplated by this Agreement or the Loan Documents for any reason or any guarantor under any guaranty of all or any portion of the Obligations shall at any time disavow or deny liability under such guaranty in writing.

(l) ERISA Plan Assets. Any assets of Borrower, the REIT or any Agreement Party shall constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code or Borrower, the REIT or any Agreement Party shall be an "employee benefit plan" as defined in Section 3(3) of ERISA, a "multiemployer plan" as defined in Sections 4001(a)(3) or 3(37) of ERISA, or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code.

(m) ERISA Prohibited Transaction. The Obligations, any of the Loan Documents or the exercise of any of the Agent's or Lenders' rights in connection therewith shall constitute a prohibited transaction under ERISA and/or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA).

(n) ERISA Liabilities. (i) Any Termination Event occurs which will or is reasonably likely to subject Borrower, the REIT, any Subsidiary, any Agreement Party, any ERISA Affiliate thereof or any of them to a liability which Agent reasonably determines will have a Material Adverse Effect; (ii) the plan administrator of any Benefit Plan applies for approval under Section 412(d) of the Internal Revenue Code for a waiver of the minimum funding standards of Section 412(a) of the Internal Revenue Code and Agent reasonably determines that the business hardship upon which the Section 412(d) waiver request was based will or would reasonably be anticipated to subject Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to a liability which Agent reasonably determines will have a Material Adverse Effect; (iii) any Benefit Plan shall incur an "accumulated funding deficiency" (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA) for which a waiver shall not have been obtained in accordance with the applicable provisions of the Internal Revenue Code or ERISA which "accumulated funding deficiency" will or would reasonably be anticipated to subject Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to a liability which the Agent reasonably determines will have a Material Adverse Effect; (iv) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them shall

have engaged in a transaction which is prohibited under Section 4975 of the Internal Revenue Code or Section 406 of ERISA which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which the Agent reasonably determines will have a Material Adverse Effect; (v) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them shall fail to pay when due an amount which it shall have become liable to pay to the PBGC, a Plan or a trust established under Title IV of ERISA which failure will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which the Agent reasonably determines will have a Material Adverse Effect; (vi) a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that a Benefit Plan must be terminated or have a trustee appointed to administer such Plan which condition will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which the Agent reasonably determines will have a Material Adverse Effect; (vii) a Lien shall be imposed on any assets of Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them in favor of the PBGC or a Plan which the Agent reasonably determines will have a Material Adverse Effect; (viii) Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them shall suffer a partial or complete withdrawal from a Multiemployer Plan or shall be in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan resulting from a complete or partial withdrawal (as described in Section 4203 or 4205 of ERISA) from such Multiemployer Plan which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which the Agent reasonably determines will have a Material Adverse Effect; or (ix) a proceeding shall be instituted by a fiduciary of any Multiemployer Plan against Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them to enforce Section 515 of ERISA which will or would reasonably be anticipated to result in the imposition of a liability on Borrower, the REIT, any Subsidiary, any Agreement Party, or any ERISA Affiliate thereof or any of them which the Agent reasonably determines will have a Material Adverse Effect.

(o) Solvency. Borrower, any Agreement Party or the REIT shall cease to be Solvent.

(p) Board of Directors. During any 12-month period, individuals who were directors of the REIT on the first day of such period shall not constitute a majority of the board of directors of the REIT.

(q) Term Loan Credit Agreement. An "Event of Default" shall have occurred under the Term Loan Credit Agreement.

An Event of Default shall be deemed "continuing" until cured or waived in writing in accordance with Section 12.05.

10.02 Rights and Remedies.

(a) Acceleration. Upon the occurrence of any Event of Default with respect to Borrower described in the foregoing Section 10.01(g) or 10.01(h), the Commitments (including the obligations of Swingline Lender and Issuing Lender) shall automatically and immediately terminate and the unpaid principal amount of and any and all accrued interest on the Loans and all of the other Obligations shall automatically become immediately due and payable, with all additional interest from time to time accrued thereon and without presentment, demand or protest or other requirements of any kind (including without limitation valuation and appraisal, diligence, presentment, notice of intent to demand or accelerate or notice of acceleration), all of which are hereby expressly waived by Borrower, and the obligations of Lenders to make any Loans hereunder shall thereupon terminate; and upon the occurrence and during the continuance of any other Event of Default, Agent shall, at the request of, or may, with the consent of, Requisite Lenders, by written notice to Borrower, (i) declare that the Commitments (including the obligations of Swingline Lender and Issuing Lender) are terminated, whereupon the Commitments and the obligation of Lenders to make any Loans hereunder shall immediately terminate, and/or (ii) declare the unpaid principal amount of and any and all accrued and unpaid interest on the Loans and all of the other Obligations to be, and the same shall thereupon be, immediately due and payable with all additional interest from time to time accrued thereon and without presentment, demand, or protest or other requirements of any kind (including without limitation, valuation and appraisal, diligence, presentment, notice of intent to demand or accelerate and of acceleration), all of which are hereby expressly waived by Borrower. Upon the occurrence of and during the continuance of an Event of Default, no Agreement Party shall be permitted to make any distributions or dividends without the prior written consent of Agent. Upon the occurrence of an Event of Default or an acceleration of the Obligations, Agent and Lenders may exercise all or any portion of the rights and remedies set forth in the Loan Documents.

(b) Access to Information. Notwithstanding anything to the contrary contained in the Loan Documents, upon the occurrence of and during the continuance of an Event of Default, Agent shall be entitled to request and receive, by or through Borrower or appropriate legal process, any and all information concerning the REIT, Borrower, any Subsidiary of Borrower, any Investment Affiliate, any Agreement Party, or any property of any of them, which is reasonably available to or obtainable by Borrower.

(c) Waiver of Demand. Demand, presentment, protest and notice of nonpayment are hereby waived by Borrower.

(d) Waivers, Amendments and Remedies. No delay or omission of Agent or Lenders to exercise any right under any Loan Document shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein, and any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in a writing signed by Agent after obtaining written approval thereof or the signature thereon of those Lenders required to approve such waiver, amendment or other variation, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to Agent and Lenders until the Obligations have been paid in full, the Commitments have expired or terminated and this Agreement has been terminated.



10.03 Rescission. If at any time after acceleration of the maturity of the Loans, Borrower shall pay all arrears of interest and all payments on account of principal of the Loans which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Unmatured Events of Default (other than nonpayment of principal of and accrued interest on the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 12.05, then by written notice to Borrower, Requisite Lenders may elect, in the sole discretion of Requisite Lenders to rescind and annul the acceleration and its consequences; but such action shall not affect any subsequent Event of Default or Unmatured Event of Default or impair any right or remedy in connection therewith. The provisions of the preceding sentence are intended merely to bind Lenders to a decision which may be made at the election of Requisite Lenders; they are not intended to benefit Borrower and do not give Borrower the right to require Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

10.04 Suspension of Lending. At any time during which an Unmatured Event of Default exists pursuant to Section 10.01(c) or Section 10.01(d) and is not cured (by improvement in the applicable financial measure by compliance with the applicable financial covenant in such 40-day period or as provided in Section 10.01(d)), Borrower shall have no right to receive any additional Loans.

ARTICLE XI.  
AGENCY PROVISIONS

11.01 Appointment

(a) Each Lender hereby designates and appoints Wells Fargo as Agent of such Lender under this Agreement and the Loan Documents, and each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Loan Documents and to exercise such powers as are set forth herein or therein, together with such other powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Article XI.

(b) The provisions of this Article XI are solely for the benefit of Agent and Lenders, and Borrower shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as Agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower.

11.02 Nature of Duties. Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement or in the Loan Documents. The duties of Agent shall be administrative in nature. Subject to the provisions of Sections 11.05 and 11.07, Agent shall administer the Loans in the same manner as it administers its own loans. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Loan Documents, expressed or implied, is intended or shall be construed to impose upon Agent any obligation in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the REIT, Borrower, the

Subsidiaries, the Investment Affiliates, and each Agreement Party in connection with the making and the continuance of the Loans hereunder and shall make its own assessment of the creditworthiness of the REIT, Borrower, the Subsidiaries, the Investment Affiliates, and each Agreement Party, and, except as specifically provided herein, Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the Closing Date or at any time or times thereafter.

#### 11.03 Loan Disbursements

(a) Promptly after receipt of a Notice of Borrowing for a Loan to be made pursuant to Section 2.01 hereof, but in no event later than one (1) Business Day prior to the proposed Funding Date for a Base Rate Loan or two (2) Business Days prior to the proposed Funding Date for a LIBOR Loan, Agent shall notify each Lender of the proposed Borrowing and the Funding Date set forth therein. Each Lender shall make available to Agent (or the funding bank or entity designated by Agent), the amount of such Lender's Pro Rata Share of such Borrowing in immediately available funds not later than the times designated in Section 11.03(b). Unless Agent shall have been notified by any Lender prior to such time for funding in respect of any Borrowing that such Lender does not intend to make available to Agent such Lender's Pro Rata Share of such Borrowing, Agent may assume that such Lender has made such amount available to Agent and Agent, in its sole discretion, may, but shall not be obligated to, make available to Borrower a corresponding amount. If such corresponding amount is not in fact made available to Agent by such Lender on or prior to a Funding Date, such Lender agrees to pay to Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is paid or repaid to Agent, at the Federal Funds Rate. If such Lender shall pay to Agent such corresponding amount, such amount so paid shall constitute such Lender's Pro Rata Share of such Borrowing. If such Lender shall not pay to Agent such corresponding amount after reasonable attempts are made by Agent to collect such amounts from such Lender, Borrower agrees to repay to Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to Agent, at the interest rate applicable thereto.

(b) Requests by Agent for funding by Lenders of Loans will be made by telecopy. Each Lender shall make the amount of its Loan available to Agent in Dollars and in immediately available funds, to such bank and account, in El Segundo, California as Agent may designate, not later than 10:00 A.M. (California time) on the Funding Date designated in the Notice of Borrowing with respect to such Loan. Nothing in this Section 11.03(b) shall be deemed to relieve any Lender of its obligation hereunder to make its Pro Rata Share of Loans on any Funding Date, nor shall any Lender be responsible for the failure of any other Lender to perform its obligations to make any Loan hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make a Loan.

#### 11.04 Distribution and Apportionment of Payments

(a) Subject to Section 11.04(b), payments actually received by Agent for the account of Lenders shall be paid to them promptly after receipt thereof by Agent, but in any

event prior to 3:00 P.M. (California time) on the day of receipt (if received by 11:00 A.M. (California time) on such day), or within one (1) Business Day thereafter (if received after 11:00 A.M. (California time) on the day of receipt), provided that Agent shall pay to such Lenders interest thereon at the Federal Funds Rate from the Business Day on which such funds are required to be paid to Lenders by Agent until such funds are actually paid in immediately available funds to such Lenders. All payments of principal and interest in respect of outstanding Loans (other than Swingline Loans), all payments of the fees described in this Agreement (other than agency and arrangement fees described in Section 2.04(c)), and all payments in respect of any other Obligations shall be allocated among such of Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein. Agent shall promptly, but in any event within two (2) Business Days (with interest thereon, if required pursuant to this Section 11.04(a)), distribute to each Lender at its primary address set forth on the appropriate counterpart signature page hereof or on the Assignment and Assumption, or at such other address as a Lender may request in writing, such funds as it may be entitled to receive, provided that Agent shall in any event not be bound to inquire into or determine the validity, scope or priority of any interest or entitlement of any Lender and may suspend all payments and seek appropriate relief (including without limitation instructions from Requisite Lenders, or all Lenders, as applicable, or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby. The order of priority herein is set forth solely to determine the rights and priorities of Lenders as among themselves and may at any time or from time to time be changed by Lenders as they may elect, in writing in accordance with Section 12.05, without necessity of notice to or consent of or approval by Borrower or any other Person.

(b) Notwithstanding any provision hereof to the contrary, until such time as a Defaulting Lender has funded its Pro Rata Share of a Loan (other than a Swingline Loan but including a Mandatory Borrowing) or draw on a Letter of Credit which was previously a Non Pro Rata Loan, or all other Lenders have received payment in full (whether by repayment or prepayment) of the principal and interest due in respect of such Non Pro Rata Loan, all of the Obligations owing to such Defaulting Lender hereunder shall be subordinated in right of payment, as provided in the following sentence, to the prior payment in full of all principal, interest and fees in respect of all Non Pro Rata Loans in which the Defaulting Lender has not funded its Pro Rata Share (such principal, interest and fees being referred to as "Senior Loans"). All amounts paid by Borrower and otherwise due to be applied to the Obligations owing to the Defaulting Lender pursuant to the terms hereof shall be distributed by Agent to the other Lenders in accordance with their respective Pro Rata Shares (recalculated for purposes hereof to exclude the Defaulting Lender's Commitment), until all Senior Loans have been paid in full. This provision governs only the relationship among Agent, each Defaulting Lender, and the other Lenders; nothing hereunder shall limit the obligation of Borrower to repay all Loans in accordance with the terms of this Agreement. The provisions of this section shall apply and be effective regardless of whether an Event of Default occurs and is then continuing, and notwithstanding (i) any other provision of this Agreement to the contrary, (ii) any instruction of Borrower as to its desired application of payments or (iii) the suspension of such Defaulting Lender's right to vote on matters which are subject to the consent or approval of Requisite Lenders, Supermajority Lenders, or all Lenders. No Unused Facility Fee shall accrue in favor of, or be payable to, such Defaulting Lender from the date of any failure to fund Loans (other than Swingline Loans but including Loans made pursuant to Mandatory Borrowings) or draws on Letters of Credit or reimburse Agent for any Liabilities and Costs as herein provided until such

failure has been cured and, without limitation of other provisions set forth in this Agreement, Agent shall be entitled to (i) collect interest from such Lender for the period from the date on which the payment was due until the date on which the payment is made at the Federal Funds Rate for each day during such period, (ii) withhold or set off, and to apply to the payment of the defaulted amount and any related interest, any amounts to be paid to such Defaulting Lender under this Agreement, and (iii) bring an action or suit against such Defaulting Lender in a court of competent jurisdiction to recover the defaulted amount and any related interest. In addition, the Defaulting Lender shall indemnify, defend and hold Agent and each of the other Lenders harmless from and against any and all Liabilities and Costs plus interest thereon at the default rate set forth in the Loan Documents for funds advanced by Agent or any other Lender on account of the Defaulting Lender which they may sustain or incur by reason of or as a direct consequence of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement.

11.05 Rights, Exculpation, Etc. Neither Agent, any Affiliate of Agent, nor any of their respective officers, directors, employees, agents, attorneys or consultants, shall be liable to any Lender for any action taken or omitted by them hereunder or under any of the Loan Documents, or in connection herewith or therewith, except that Agent shall be liable for its gross negligence or willful misconduct in the performance of its express obligations hereunder. In the absence of gross negligence or willful misconduct, Agent shall not be liable for any apportionment or distribution of payments made by it in good faith pursuant to Section 11.04. Agent shall not be responsible to any Lender for any recitals, statements, representations or warranties herein or for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement, or any of the other Loan Documents, or any of the transactions contemplated hereby and thereby; or for the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party. Agent shall not be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the Loan Documents or the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party, or the existence or possible existence of any Unmatured Event of Default or Event of Default. Agent may at any time request instructions from Lenders with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Agent is permitted or required to take or to grant without instructions from any Lenders, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Requisite Lenders or Supermajority Lenders, as the case may be. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders, Supermajority Lenders or, where applicable, all Lenders. Agent shall promptly notify each Lender at any time that the Requisite Lenders or Supermajority Lenders, as the case may be, have instructed Agent to act or refrain from acting pursuant hereto.

11.06 Reliance. Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents, telecopies or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the Loan

Documents and its duties hereunder or thereunder, upon advice of legal counsel (including counsel for Borrower), independent public accountant and other experts selected by it.

11.07 Indemnification. To the extent that Agent or Issuing Lender is not reimbursed and indemnified by Borrower, Lenders will reimburse, within ten (10) days after notice from Agent, and indemnify Agent and Issuing Lender for and against any and all Liabilities and Costs which may be imposed on, incurred by, or asserted against it (in its capacity as Agent or Issuing Lender) in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by Agent or Issuing Lender (in its capacity as Agent or Issuing Lender) under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, provided that no Lender shall be liable for any portion of such Liabilities and Costs resulting from Agent's or Issuing Lender's gross negligence or willful misconduct, bad faith or fraud. The obligations of Lenders under this Section 11.07 shall survive the payment in full of all Obligations and the termination of this Agreement. In the event that after payment and distribution of any amount by Agent to Lenders, any Lender or third party, including Borrower, any creditor of Borrower or a trustee in bankruptcy, recovers from Agent any amount found to have been wrongfully paid to Agent or disbursed by Agent to Lenders, then Lenders, in proportion to their respective Pro Rata Shares, shall reimburse Agent for all such amounts. Notwithstanding the foregoing, Agent shall not be obligated to advance Liabilities and Costs and may require the deposit by each Lender of its Pro Rata Share of any material Liabilities and Costs anticipated by Agent before they are incurred or made payable.

11.08 Agent Individually. With respect to its Pro Rata Share of the Commitments hereunder and the Loans made by it, Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms "Lenders", "Requisite Lenders", "Supermajority Lenders", or any similar terms may include Agent in its individual capacity as a Lender, one of the Requisite Lenders or one of the Supermajority Lenders, but Requisite Lenders and Supermajority Lenders shall not include Agent solely in its capacity as Agent. Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with Borrower or any of its Subsidiaries or Affiliates as if it were not acting as Agent pursuant hereto.

#### 11.09 Successor Agent; Resignation of Agent; Removal of Agent

(a) Agent may resign from the performance of all its functions and duties hereunder at any time by giving at least thirty (30) Business Days prior written notice to Lenders and Borrower. For good cause, by a determination of all the Lenders (excluding for such determination the Agent in its capacity as a Lender), the Agent may be removed at any time by giving at least thirty (30) Business Days prior written notice to Agent and Borrower. Such resignation or removal shall take effect upon the acceptance by a successor Agent of appointment pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation by or removal of Agent, Requisite Lenders shall appoint a successor Agent with the consent of Borrower, which shall not be unreasonably withheld or delayed (and approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default). Any successor Agent must be a bank (i) the senior debt obligations of which (or such Bank's parent's senior debt obligations) are

rated not less than Baa-1 by Moody's Inc. or a comparable rating by a rating agency acceptable to Requisite Lenders, (ii) which has total assets in excess of Ten Billion Dollars (\$10,000,000,000) and (iii) which is a Lender as of the date of such succession holding a Commitment without participants equal to at least ten percent (10%) of the Facility. Agent hereby agrees to remit to any successor Agent, a pro rata portion of any annual agent's fee received by Agent, in advance, for the one-year period covered by such agent's fee based upon the portion of such year then remaining.

(c) If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring or removed Agent, with the consent of Borrower, which may not be unreasonably withheld or delayed (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), shall then appoint a successor Agent who shall meet the requirements described in subsection (b) above and who shall serve as Agent until such time, if any, as Requisite Lenders, with the consent of Borrower, which may not be unreasonably withheld or delayed (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), appoint a successor Agent as provided above.

(d) Any Person succeeding Wells Fargo (or any successor to Wells Fargo) as Agent hereunder shall also serve as Issuing Lender and Swingline Lender; provided, however, that the issuer of any Letter of Credit outstanding at the time of such succession shall retain all of the rights and protections of Issuing Lender hereunder with respect to such Letter of Credit.

#### 11.10 Consents and Approvals

(a) Each Lender authorizes and directs Agent to enter into the Loan Documents other than this Agreement for the benefit of Lenders. Each Lender agrees that any action taken by Agent at the direction or with the consent of Requisite Lenders or the Supermajority Lenders and any action taken by Agent not requiring consent by Requisite Lenders, Supermajority Lenders, or all Lenders in accordance with the provisions of this Agreement or any Loan Document, and the exercise by Agent at the direction or with the consent of Requisite Lenders or the Supermajority Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders, except for actions specifically requiring the approval of all Lenders. All communications from Agent to Lenders requesting Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter or item as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if reasonably requested by a Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to Agent by Borrower in respect of the matter or issue to be resolved, and (iv) shall include Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within fifteen (15) Business Days after receipt of the request therefor from Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Agent that it objects to the recommendation or determination of Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions

requiring the approval of Requisite Lenders, Supermajority Lenders or all Lenders, Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination recommended to Lenders by Agent or such other course of action recommended by Requisite Lenders or Supermajority Lenders, as the case may be, and each non-responding Lender shall be deemed to have concurred with such recommended course of action. The following amendments, modifications or waivers shall require the consent of the Requisite Lenders:

(i) Waiver of Sections 8.01(h) or 8.02(f);

(ii) Acceleration following an Event of Default pursuant to Section 10.02(a) (except for any Event of Default pursuant to Sections 10.01(g) or 10.01(h)) or rescission of such acceleration pursuant to Section 10.03;

(iii) Approval of the exercise of remedies requiring the consent of the Requisite Lenders under Section 10.02(a);

(iv) Appointment of a successor Agent in accordance with Sections 11.09(b) and (c);

(v) Disapproval of any Property as a Qualifying Unencumbered Property.

(b) Except for amendments, modifications and waivers requiring the consent of all Lenders pursuant to Section 12.05(b) hereof, the consent of the Supermajority Lenders shall be required to amend or modify Sections 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07 or 10.01(a) or to waive any requirement thereof or to amend or modify this Section 11.10(b).

(c) In addition to the required consents or approvals referred to in Section 12.05, Agent may at any time request instructions from Requisite Lenders with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Agent is permitted or required to take or to grant without instructions from any Lenders, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Requisite Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement, any of the other Loan Documents in accordance with the instructions of Requisite Lenders or, where applicable, Supermajority Lenders or all Lenders. Agent shall promptly notify each Lender at any time that the Requisite Lenders or Supermajority Lenders have instructed Agent to act or refrain from acting pursuant hereto.

11.11 [Intentionally Omitted]

11.12 [Intentionally Omitted]

11.13 Assignments and Participations

(a) Subject to the provisions of Section 11.13(j), after first obtaining the approval of Agent and Borrower, which approval will not be unreasonably withheld (and which approval from Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), each Lender may assign to one or more banks, finance companies, insurance or other financial institutions all or a portion of its rights and obligations under this Agreement in accordance with the provisions of this Section (including without limitation all or a portion of its Commitment and the Loans owing to it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of the assigning Lender's rights and obligations under this Agreement and the assignment shall cover the same percentage of such Lender's Commitment and Loans, (ii) unless Agent and Borrower otherwise consent (which consent of Borrower shall not be required upon the occurrence and during the continuance of an Event of Default), the aggregate amount of the Commitment of the assigning Lender being assigned to a Person that is not already a Lender hereunder (provided such Lender was also a Lender on the Closing Date) pursuant to each such assignment shall in no event be less than Five Million Dollars (\$5,000,000) and shall be an integral multiple of One Million Dollars (\$1,000,000), (iii) the parties to each such assignment shall execute and deliver to Agent, for its approval and acceptance, an Assignment and Assumption and (iv) Agent shall receive from the assignor or assignors for its sole account a processing fee of Three Thousand Dollars (\$3,000). Upon such execution, delivery, approval and acceptance, and upon the effective date specified in the applicable Assignment and Assumption, (A) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been validly and effectively assigned to it pursuant to such Assignment and Assumption, have the rights and obligations of a Lender hereunder and (B) the Lender-assignor thereunder shall, to the extent that rights and obligations hereunder have been validly and effectively assigned by it pursuant to such Assignment and Assumption, relinquish its rights and be released from its obligations under this Agreement.

(b) By executing and delivering an Assignment and Assumption, the Lender-assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Assumption, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party or the performance or observance by the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party of any of their respective obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Article VI or delivered pursuant to Article VI to the date of such assignment and such other Loan Documents and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (iv) such assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee appoints and authorizes Agent to take such action



as Agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) Agent shall maintain at its address referred to on the counterpart signature pages hereof a copy of each Assignment and Assumption delivered to and accepted by it and shall record the names and addresses of each Lender and the Commitment of, and principal amount of the Loans owing to, such Lender from time to time. Borrower, Agent and Lenders may treat each Person whose name is so recorded as a Lender hereunder for all purposes of this Agreement.

(d) Upon its receipt of an Assignment and Assumption executed by an assigning Lender and an assignee, Agent shall, if such Assignment and Assumption has been properly completed and is in substantially the form of Exhibit A, (i) accept such Assignment and Assumption, (ii) record the information contained therein and (iii) give prompt notice thereof to Borrower. Upon request, Borrower will execute and deliver to Agent an appropriate replacement promissory note or replacement promissory notes in favor of each assignee (and assignor, if such assignor is retaining a portion of its Commitment and Loans) reflecting such assignee's (and assignor's) Pro Rata Share(s) of the Facility. Upon execution and delivery of such replacement promissory notes, the original promissory note or notes evidencing all or a portion of the Commitments and Loans being assigned shall be canceled and returned to Borrower.

(e) Each Lender may sell participations to one or more banks, finance companies, insurance or other entities in or to all or a portion of its rights and obligations under this Agreement (including without limitation all or a portion of its Commitment and the Loans owing to it); provided, however, that (i) such Lender's obligations under this Agreement (including without limitation its Commitment to Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrower, Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement and (iv) the holder of any such participation shall not be entitled to voting rights under this Agreement except that such Participant may have the contractual right in the applicable participation agreement to prevent (A) increases in the Facility, (B) extensions of the Maturity Date (except pursuant to Article III hereof), (C) decreases in the interest rates described in this Agreement, and (D) a release of the REIT Guaranty.

(f) Borrower will use reasonable efforts to cooperate with Agent and Lenders in connection with the assignment of interests under this Agreement or the sale of participations herein.

(g) Anything in this Agreement to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Agreement, including Section 11.13, any Lender may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from its obligations

thereunder. To facilitate any such pledge or assignment, Agent shall, at the request of such Lender, enter into a letter agreement with the Federal Reserve Bank in, or substantially in, the form of the exhibit to Appendix C to the Federal Reserve Bank of New York Operating Circular No 12.

(h) Anything in this Agreement to the contrary notwithstanding, any Lender may assign all or any portion of its rights and obligations under this Agreement to a Lender Affiliate of such Lender without first obtaining the approval of Agent and Borrower, provided that (i) at the time of such assignment such Lender is not a Defaulting Lender, (ii) such Lender gives Agent and Borrower at least fifteen (15) days prior written notice of any such assignment; (iii) the parties to each such assignment execute and deliver to Agent an Assignment and Assumption, and (iv) Agent receives from assignor for its sole account a processing fee of Three Thousand Dollars (\$3,000).

(i) No Lender shall be permitted to assign, or sell a participation interest in, all or any portion of its rights and obligations under this Agreement to Borrower or any Affiliate of Borrower.

(j) Anything in this Agreement to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, no Lender shall be permitted to enter into an assignment of its rights and obligations hereunder which would result in such Lender holding a Commitment of less than Ten Million Dollars (\$10,000,000). In the event Agent ceases to hold a Commitment of less than ten percent (10%) of the Facility, Agent shall resign from the performance of all of its functions and duties hereunder; provided, however, that no such resignation shall be required during the continuance of an Event of Default.

11.14 Ratable Sharing. Subject to Sections 11.03 and 11.04, Lenders agree among themselves that (i) with respect to all amounts received by them which are applicable to the payment of the Obligations, equitable adjustment will be made so that, in effect, all such amounts will be shared among them ratably in accordance with their Pro Rata Shares, whether received by voluntary payment, by the exercise of the right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any or all of the Obligations, (ii) if any of them shall by voluntary payment or by the exercise of any right of counterclaim, set-off, banker's lien or otherwise, receive payment of a proportion of the aggregate amount of the Obligations held by it which is greater than its Pro Rata Share of the payments on account of the Obligations, the one receiving such excess payment shall purchase, without recourse or warranty, an undivided interest and participation (which it shall be deemed to have done simultaneously upon the receipt of such payment) in such Obligations owed to the others so that all such recoveries with respect to such Obligations shall be applied ratably in accordance with their Pro Rata Shares; provided, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to that party to the extent necessary to adjust for such recovery, but without interest except to the extent the purchasing party is required to pay interest in connection with such recovery. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 11.14 may, to the fullest extent permitted by law, exercise all its rights of payment (including, subject to Section 12.04, the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

11.15 Delivery of Documents. Agent shall as soon as reasonably practicable distribute to each Lender at its primary address set forth on the appropriate counterpart signature page hereof or at such other address as a Lender may request in writing, (i) all documents to which such Lender is a party or of which such Lender is a beneficiary and (ii) all documents of which Agent receives copies from Borrower for distribution to Lenders pursuant to Sections 6.01 and 12.07. In addition, within ten (10) Business Days after receipt of a request in writing from a Lender for written information or documents provided by or prepared by Borrower, the REIT or any Agreement Party, Agent shall deliver such written information or documents to such requesting Lender if Agent has possession of such written information or documents in its capacity as Agent or as a Lender.

11.16 Notice of Events of Default. Except as expressly provided in this Section 11.16, Agent shall not be deemed to have knowledge or notice of the occurrence of any Unmatured Event of Default or Event of Default (other than nonpayment of principal of or interest on the Loans) unless Agent has received notice in writing from a Lender or Borrower referring to this Agreement or the other Loan Documents, describing such event or condition and expressly stating that such notice is a notice of an Unmatured Event of Default or Event of Default. Should Agent receive such notice of the occurrence of an Unmatured Event of Default or Event of Default, or should Agent send Borrower a notice of Unmatured Event of Default or Event of Default, Agent shall promptly give notice thereof to each Lender.

ARTICLE XII.  
MISCELLANEOUS

12.01 Expenses

(a) Generally. Borrower agrees, within thirty (30) days after receipt of a written notice from the Agent, to pay or reimburse Agent for all of Agent's reasonable costs and expenses incurred by Agent at any time (whether prior to, on or after the date of this Agreement) in connection with: (A) the negotiation, preparation and execution of this Agreement and the other Loan Documents and any amendments or waivers with respect hereto requested by Borrower, including, without limitation, the reasonable fees, expenses and disbursements of Agent's outside counsel incurred in connection therewith; (B) the making of the Loans and (C) the collection or enforcement by Agent of any of the Obligations, including, without limitation, reasonable attorneys' fees and costs incurred in connection therewith.

(b) After Event of Default. Borrower further agrees to pay, or reimburse Agent and Lenders, for all reasonable costs and expenses, including without limitation reasonable attorneys' fees and disbursements incurred by Agent or Lenders after the occurrence of an Event of Default (i) in enforcing any Obligation or exercising or enforcing any other right or remedy available by reason of such Event of Default; (ii) in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or in any insolvency or bankruptcy proceeding; (iii) in commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to Borrower, the REIT or any Agreement Party and related to or arising out of the transactions contemplated hereby; (iv) in taking any other action in or with respect to any suit or proceeding (whether in bankruptcy or otherwise); (v) in protecting, preserving, collecting, leasing, selling, taking possession of, or liquidating any such collateral; or

(vi) attempting to enforce or enforcing any rights under the Loan Documents; provided, however, that the attorneys' fees and disbursements for which Borrower is obligated under this subsection (b) shall be limited to the reasonable non-duplicative fees and disbursements of counsel for Agent and counsel for all Lenders as a group. For purposes of this Section 12.01(b), (i) counsel for Agent shall mean a single outside law firm representing Agent plus any additional law firms providing special local law representation in connection with the enforcement of the Loan Documents, and (ii) counsel for all Lenders as a group shall mean a single outside law firm representing such Lenders as a group.

#### 12.02 Indemnity

(a) Generally. Borrower shall indemnify and defend Agent, Swingline Lender, Issuing Lender and each Lender and their respective affiliates, participants, officers, directors, employees and agents (each an "Indemnitee") against, and shall hold each such Indemnitee harmless from, any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which such Indemnitee may suffer or incur: (i) in connection with claims made by third parties against such Indemnitee for losses or damages suffered by such third party as a result of (A) such Indemnitee's performance of this Agreement or any of the other Loan Documents, including without limitation such Indemnitee's exercise or failure to exercise any rights, remedies or powers in connection with this Agreement or any of the other Loan Documents or (B) the failure by Borrower, the REIT or any Agreement Party to perform any of their respective obligations under this Agreement or any of the other Loan Documents as and when required hereby or thereby, including without limitation any failure of any representation or warranty of Borrower, the REIT or any Agreement Party to be true and correct; (ii) in connection with any claim or cause of action of any kind by any Person to the effect that such Indemnitee is in any way responsible or liable for any act or omission by Borrower, the REIT or any Agreement Party, whether on account of any theory of derivative liability or otherwise, (iii) in connection with the past, present or future environmental condition of any Property owned by Borrower, the REIT, Subsidiary or any Agreement Party, the presence of asbestos-containing materials at any such Property, the presence of Contaminants in groundwater at any such Property, or the Release or threatened Release of any Contaminant into the environment from any such Property; or (iv) in connection with any claim or cause of action of any kind by any Person which would have the effect of denying such Indemnitee the full benefit or protection of any provision of this Agreement or any of the other Loan Documents.

(b) ERISA. Without limitation of the provisions of subsection (a) above, Borrower shall indemnify and hold each Indemnitee free and harmless from and against all loss, costs (including reasonable attorneys' fees and expenses), expenses, taxes, and damages (including consequential damages) such Indemnitee may suffer or incur by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA or the Internal Revenue Code necessary in such Indemnitee's reasonable judgment by reason of the inaccuracy of the representations and warranties set forth in the first paragraph of Section 5.01(s) or a breach of the provisions set forth in the last paragraph of Section 8.01(f).

(c) Exceptions; Limitations. Notwithstanding anything to the contrary set forth in this Section 12.02, Borrower shall have no obligation to any Indemnitee hereunder with respect to (i) any intentional tort, fraud or act of gross negligence or bad faith which any Indemnitee is personally determined by the judgment of a court of competent jurisdiction (sustained on appeal, if any) to have committed, (ii) any liability of such Indemnitee to any third party based upon contractual obligations of such Indemnitee owing to such third party which are not expressly set forth in the Loan Documents or (iii) violations of Environmental Laws relating to a Property which are caused by the act or omission of such Indemnitee after such Indemnitee takes possession of such Property and which would not have occurred if such Indemnitee had exercised reasonable care under the circumstances. In addition, the indemnification set forth in this Section 12.02 in favor of any officer, director, partner, employee or agent of Agent, Swingline Lender, Issuing or any Lender shall be solely in their respective capacities as such officer, director, partner, employee or agent. Such indemnification in favor of any affiliate of Agent, Swingline Lender, Issuing Lender or any Lender shall be solely in its capacity as the provider of services to Agent, Swingline Lender, Issuing Lender or such Lender in connection with this Agreement, and such indemnification in favor of any participant of Agent or any Lender shall be solely in its capacity as a participant in the Commitments and the Loans.

(d) Payment; Survival. Borrower shall pay any amount owing under this Section 12.02 within thirty (30) days after written demand therefor by the applicable Indemnitee together with reasonable supporting documentation therefor. The indemnity set forth in this Section 12.02 shall survive the payment of all amounts payable pursuant to, and secured by, this Agreement and the other Loan Documents. Payment by any Indemnitee shall not be a condition precedent to the obligations of Borrower under this Section 12.02. To the extent that any indemnification obligation set forth in this Section 12.02 may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of the applicable indemnified matter.

12.03 Change in Accounting Principles. Except as otherwise provided herein, if any changes in accounting principles from those used in the preparation of the most recent financial statements delivered to Agent pursuant to the terms hereof are hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions) and are adopted by the REIT, Borrower, any Subsidiary, any Investment Affiliate, or any Agreement Party with the agreement of its independent certified public accountants and such changes result in a change in the method of calculation of any of the financial covenants, standards or terms found herein, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such changes with the desired result that the criteria for evaluating the financial condition of the REIT, on a consolidated basis, shall be the same after such changes as if such changes had not been made; provided, however, that no change in GAAP that would affect the method of calculation of any of the financial covenants, standards or terms shall be given effect in such calculations until such provisions are amended, in a manner satisfactory to Agent and all Lenders, to so reflect such change in accounting principles.

12.04 Setoff. In addition to any Liens granted to Agent and any rights now or hereafter granted under applicable law and not by way of limitation of any such Lien or rights,

upon the occurrence and during the continuance of any Event of Default, Agent and each Lender are hereby authorized by Borrower at any time or from time to time, with concurrent notice to Borrower, or to any other Person (any such notice being hereby expressly waived) to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured but not including trust accounts) and any other indebtedness at any time held or owing by Agent or such Lender solely to or for the credit or the account of Borrower against and on account of the Obligations of Borrower to Agent or such Lender including but not limited to all Loans and all claims of any nature or description arising out of or connected with this Agreement or any of the other Loan Documents, irrespective of whether or not (a) Agent or such Lender shall have made any demand hereunder or (b) Agent shall have declared the principal of and interest on the Loans and other amounts due hereunder to be due and payable as permitted by Article XI and although said obligations and liabilities, or any of them, may be contingent or unmatured.

12.05 Amendments and Waivers. No amendment or modification of any provision of this Agreement shall be effective without the written agreement of Requisite Lenders (after notice to all Lenders) as provided in Section 11.10(a) and Borrower provided that the agreement of Requisite Lenders shall not be required for amendments or modifications that are purely of a clerical nature or that correct a manifest error and no termination or waiver of any such provision of this Agreement (including without limitation any waiver of an Event of Default which does not specifically require the consent of all Lenders), or consent to any departure by Borrower therefrom, shall in any event be effective without the written concurrence of Requisite Lenders (after notice to all Lenders) as provided in Section 11.10(a), which Requisite Lenders shall have the right to grant or withhold at their sole discretion, except that the amendments, modifications or waivers specified in Section 11.10(b) shall require the consent of the Supermajority Lenders and the following amendments, modifications or waivers shall require the consent of all Lenders (other than Section 12.05(j) which shall require the consent of all Lenders other than Agent):

- (a) Increasing the Commitments or any Lender's Commitments;
- (b) Changing the principal amount or final maturity of the Loans;
- (c) Reducing or increasing the interest rates applicable to the Loans (other than Swingline Loans);
- (d) Reducing the rates on which fees payable pursuant hereto are determined;
- (e) Forgiving or delaying any amount payable under Article II (other than late fees);
- (f) Changing the definition of "Requisite Lenders," "Loan Availability," "Supermajority Lenders," or "Pro Rata Shares";
- (g) Changing any provision contained in Section 12.05;
- (h) Releasing any obligor under any Loan Document, unless such release is otherwise required by the terms of this Agreement or any other Loan Document;

Maturity Date; (a) Issuing a Letter of Credit for a term extending beyond the

(i) Removal of Agent for good cause in accordance with Section 11.09(a); and

(j) Modifying or waiving any other provision herein which specifically requires the consent of all Lenders.

Notwithstanding anything to the contrary contained in this Agreement, Borrower shall have no right to consent to any amendment, modification, termination or waiver of any provision of Article XI hereof; provided, however, that no amendment, modification, termination or waiver of Section 11.09(b), 11.09(c), 11.10(a), or 11.13 (except subsection (i) thereof) which has an adverse effect on Borrower or Borrower's rights hereunder shall be effective without the written concurrence of Borrower. Agent and Lenders further acknowledge and agree that the remaining provisions of Article XI are intended to and shall continue to address only the rights and obligations of Agent and Lenders amongst each other and do not and shall not impose obligations or restrictions upon Borrower or result in any way in the loss of any rights, claims or defenses of Borrower. No amendment, modification, termination or waiver of any provision of Article XI hereof or any other provision referring to any Agent, Swingline Lender or Issuing Lender shall be effective without the written concurrence of the Agent, Swingline Lender or Issuing Lender, as applicable. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section shall be binding on each assignee, transferee or recipient of Agent's powers, functions or duties or any Lender's Commitment under this Agreement or the Loans at the time outstanding.

12.06 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Event of Default or Unmatured Event of Default if such action is taken or condition exists.

12.07 Notices and Delivery. Unless otherwise specifically provided herein, any consent, notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or if deposited in the United States mail (registered or certified, with postage prepaid and properly addressed) upon receipt or refusal to accept delivery. Notices to Agent, Swingline Lender or Issuing Lender pursuant to Article II shall not be effective until received by Agent, Swingline Lender or Issuing Lender, as applicable. For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section 12.07) shall be as set forth below each party's name on the signature pages hereof, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties. All deliveries to be made to Agent for

distribution to the Lenders shall be made to Agent at the addresses specified for notice on the signature page hereto and, in addition, a sufficient number of copies of each such delivery shall be delivered to Agent for delivery to each Lender at the address specified for deliveries on the signature page hereto or such other address as may be designated by Agent or Lenders in a written notice.

12.08 Survival of Warranties, Indemnities and Agreements. All agreements, representations, warranties and indemnities made or given herein or pursuant hereto shall survive the execution and delivery of this Agreement and the other Loan Documents and the making and repayment of the Loans hereunder and such indemnities shall survive termination hereof.

12.09 Failure or Indulgence Not Waiver; Remedies Cumulative. Except as otherwise expressly provided in this Agreement or any other Loan Document, no failure or delay on the part of Agent, Swingline Lender, Issuing Lender or any Lender in the exercise of any power, right or privilege under any of the Loan Documents shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under the Loan Documents are cumulative to and not exclusive of any rights or remedies otherwise available.

12.10 Marshalling; Recourse to Security; Payments Set Aside. Neither any Lender, Swingline Lender, Issuing Lender nor Agent shall be under any obligation to marshal any assets in favor of Borrower or any other party or against or in payment of any or all of the Obligations. Recourse to security shall not be required at any time. To the extent that Borrower makes a payment or payments to Agent, Swingline Lender, Issuing Lender or the Lenders or Agent, Swingline Lender, Issuing Lender or the Lenders enforce their Liens or exercise their rights of set off, and such payment or payments or the proceeds of such enforcement or set off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/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 recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

12.11 Severability. In case any provision in or obligation under this Agreement or the other Loan Documents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

12.12 Headings. 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 or be given any substantive effect.

12.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.

12.14 Limitation of Liability. To the extent permitted by applicable law, no claim may be made by Borrower, the REIT, any Lender or any other Person against Agent, Swingline Lender, Issuing Lender or any Lender, or the affiliates, directors, officers, employees,



attorneys or agents of any of them, for any punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement, or any act, omission or event occurring in connection therewith; and Borrower, the REIT, and each Lender hereby waive, release and agree not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

12.15 Successors and Assigns. This Agreement and the other Loan Documents shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Agent and Lenders. The terms and provisions of this Agreement shall inure to the benefit of any permitted assignee or transferee of the Loans and the Commitments of Lenders under this Agreement, and in the event of such transfer or assignment, the rights and privileges herein conferred upon Agent and Lenders shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. Borrower's rights or any interest therein hereunder, and Borrower's duties and obligations hereunder, shall not be assigned (whether directly, indirectly, by operation of law or otherwise) without the consent of all Lenders.

12.16 Usury Limitation. Each Loan Document is expressly limited so that in no contingency or event whatsoever, whether by reason of error of fact or law, payment, prepayment or advancement of the proceeds of the Loans, acceleration of maturity of the unpaid principal balance of the Loans, or otherwise, shall the amount paid or agreed to be paid to Lenders for the use, forbearance, or retention of money, including any fees or charges collected or made in connection with the Loans which may be treated as interest under applicable law, if any, exceed the maximum legal limit (if any such limit is applicable) under United States federal laws or state laws (to the extent not preempted by federal law, if any), now or hereafter governing the interest payable under such Loan Documents. If, from any circumstances whatsoever, fulfillment of any provision hereof or any of the other Loan Documents at the time performance of such provision shall be due, shall involve transcending the limit of validity (if any) prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances Lenders shall ever receive as interest an amount which would exceed the maximum legal limit (if any such limit is applicable), such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Loan Documents and not to the payment of interest or, if necessary, to Borrower. Notwithstanding any other provision of this Agreement or any of the other Loan Documents, this provision shall control every other provision of all Loan Documents.

12.17 Confidentiality. Agent, Swingline Lender, Issuing Lender and Lenders shall use reasonable efforts to assure that any information about Borrower, the REIT, Subsidiaries and Investment Affiliates (and their respective Properties) not generally disclosed to the public which is furnished to Agent, Swingline Lender, Issuing Lender or Lenders pursuant to the provisions of this Agreement or any of the other Loan Documents is used only for the purposes of this Agreement and the other Loan Documents and shall not be divulged to any other Person other than Agent, Swingline Lender, Issuing Lender and Lenders and their respective affiliates, officers, directors, employees and agents who are actively and directly participating in the evaluation, administration or enforcement of the Obligations; provided, however, that

nothing herein shall affect the disclosure of any such information (i) to the extent required by statute, rule, regulation or judicial process, (ii) to counsel for Agent, Swingline Lender, Issuing Lender or Lenders or to their accountants, (iii) to bank examiners and auditors, (iv) to any transferee or participant or prospective transferee or participant hereunder who agrees to be bound by this provision, (v) in connection with the enforcement of the rights of Agent, Swingline Lender, Issuing Lender and Lenders under this Agreement and the other Loan Documents, or (vi) in connection with any litigation to which Agent, Swingline Lender, Issuing Lender or any Lender is a party so long as Agent, Swingline Lender, Issuing Lender or such Lender provides Borrower with prior written notice of the need for such disclosure and exercises reasonable efforts to obtain a protective order with respect to such information from the court or other tribunal before which such litigation is pending.

12.18 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial; Waiver Of Permissive Counterclaims. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST BORROWER OR THE REIT WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE AND ALL JUDICIAL PROCEEDINGS BROUGHT BY BORROWER OR THE REIT WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION HAVING SITUS WITHIN THE BOUNDARIES OF THE FEDERAL COURT DISTRICT OF THE NORTHERN DISTRICT OF ILLINOIS, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWER AND THE REIT ACCEPT, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY FROM WHICH NO APPEAL HAS BEEN TAKEN OR IS AVAILABLE. BORROWER AND THE REIT HEREBY DESIGNATE AND APPOINT ELLEN KELLEHER, ESQ., MANUFACTURED HOME COMMUNITIES, INC., TWO NORTH RIVERSIDE PLAZA, SUITE 800, CHICAGO, ILLINOIS 60606, TO RECEIVE ON THEIR BEHALF SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT, SUCH SERVICE BEING HEREBY ACKNOWLEDGED BY SUCH PERSON TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. SUCH APPOINTMENT SHALL BE REVOCABLE ONLY WITH AGENT'S PRIOR WRITTEN APPROVAL. BORROWER AND THE REIT IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS RESPECTIVE NOTICE ADDRESS SPECIFIED ON THE SIGNATURE PAGES HEREOF, SUCH SERVICE TO BECOME EFFECTIVE UPON RECEIPT. BORROWER, THE REIT, AGENT AND LENDERS IRREVOCABLY WAIVE (A) TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND (B) ANY OBJECTION (INCLUDING WITHOUT LIMITATION ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY JURISDICTION SET FORTH ABOVE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER

JURISDICTION. BORROWER AND THE REIT AGREE THAT THEY WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIM IN ANY PROCEEDING BROUGHT BY LENDER WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT.

12.19 Counterparts; Effectiveness; Inconsistencies. This Agreement and any amendments, waivers, consents or supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. This Agreement shall become effective when Borrower, the initial Lenders, Swingline Lender, Issuing Lender and Agent have duly executed and delivered counterpart execution pages of this Agreement to each other (delivery by Borrower and the REIT to Lenders and by any Lender to Borrower, the REIT and any other Lender being deemed to have been made by delivery to Agent). This Agreement and each of the other Loan Documents shall be construed to the extent reasonable to be consistent one with the other, but to the extent that the terms and conditions of this Agreement are actually and directly inconsistent with the terms and conditions of any other Loan Document, this Agreement shall govern.

12.20 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

12.21 Entire Agreement. This Agreement, taken together with all of the other Loan Documents and all certificates and other documents delivered by Borrower to Agent in connection herewith, embodies the entire agreement and supersedes all prior agreements, written and oral, relating to the subject matter hereof.

12.22 Agent's Action for Its Own Protection Only. The authority herein conferred upon Agent, and any action taken by Agent, to inspect any Property will be exercised and taken by Agent for its own protection only and may not be relied upon by Borrower for any purposes whatsoever, and Agent shall not be deemed to have assumed any responsibility to Borrower with respect to any such action herein authorized or taken by Agent. Any review, investigation or inspection conducted by Agent, any consultants retained by Agent or any agent or representative of Agent in order to verify independently Borrower's satisfaction of any conditions precedent to the Loans, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Agreement, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Agent or Lenders of) (i) any of Borrower's representations and warranties under this Agreement or Agent's or Lenders' reliance thereon or (ii) Agent's or Lenders' reliance upon any certifications of Borrower required under this Agreement or any other facts, information or reports furnished to Agent and Lenders by Borrower hereunder.

12.23 Lenders' ERISA Covenant. Each Lender, by its signature hereto or on the applicable Assignment and Assumption, hereby agrees (a) that on the date any Loan is disbursed hereunder no portion of such Lender's Pro Rata Share of such Loan will constitute "assets" within the meaning of 29 C.F.R. ss. 2510.3-101 of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code, and (b) that following such date such Lender shall not allocate such Lender's Pro Rata Share of any Loan to an account of such Lender if such allocation (i) by itself would cause such Pro Rata Share of such Loan to then constitute "assets" (within the meaning of 29 C.F.R. ss. 2510.3-101 or any successor regulation thereto) of an "employee benefit plan" within the meaning of Section 3(3) of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code and (ii) by itself would cause such Loan to constitute a prohibited transaction under ERISA or the Internal Revenue Code (which is not exempt from the restrictions of Section 406 of ERISA and Section 4975 of the Internal Revenue Code and the taxes and penalties imposed by Section 4975 of the Internal Revenue Code and Section 502(i) of ERISA) or any Agent or Lender being deemed in violation of Section 404 of ERISA.

12.24 Sole Lead Arranger, Documentation Agent and Syndication Agent. Each of the parties to this Agreement acknowledges and agrees that the obligations of Sole Lead Arranger, Documentation Agent and Syndication Agent hereunder shall be limited to those obligations that are expressly set forth herein, if any, and Sole Lead Arranger, Documentation Agent and Syndication Agent shall not be required to take any action or assume any liability except as may be required in their respective capacities as a Lender hereunder. Each of the parties to this Agreement agrees that, for purposes of the indemnifications set forth herein, the term "Agent" shall be deemed to include Sole Lead Arranger, Documentation Agent and Syndication Agent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

"Borrower"

MHC OPERATING LIMITED  
PARTNERSHIP, an Illinois limited  
partnership

By: MANUFACTURED HOME  
COMMUNITIES, INC., a Maryland  
corporation, as General Partner

By: /s/ JOHN M. ZOELLER

-----  
Name: John M. Zoeller  
Title: Vice President/Chief Financial  
Officer

Address:  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606  
Telecopy: 312/279-1710

S-1

"REIT"

MANUFACTURED HOME  
COMMUNITIES, INC., a Maryland  
corporation

By: /s/ JOHN M. ZOELLER

-----  
Name: John M. Zoeller  
Title: Vice President/Chief Financial  
Officer

Address:  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606  
Telecopy: 312/279-1710

AGREED AND ACKNOWLEDGED  
FOR PURPOSES OF SECTION 1.04:

"REIT GUARANTOR"

MANUFACTURED HOME  
COMMUNITIES, INC., a Maryland corporation

By: /s/ JOHN M. ZOELLER

-----  
Name: John M. Zoeller  
Title: Vice President/Chief Financial Officer

Address:  
Two North Riverside Plaza, Suite 800  
Chicago, Illinois 60606  
Telecopy: 312/279-1710

WELLS FARGO BANK, N.A,  
as Agent, Sole Lead Arranger, Swingline  
Lender, Issuing Lender and a Lender

By: /s/ Steven R. Lowery

-----  
Name: Steven R. Lowery

-----  
Title: Vice President  
-----

Address:  
225 West Wacker Drive  
Suite 2550  
Chicago, Illinois 60601  
Attn.: Senior Loan Officer  
Telecopy: 312/782-0969

WITH A COPY TO:  
Wells Fargo & Co.  
Real Estate Group  
420 Montgomery Street, Floor 6  
San Francisco, California 94163  
Attn.: Chief Credit Officer  
Telecopy: 415/391-2971

WITH A COPY TO (FOR  
FINANCIAL STATEMENTS AND REPORTING  
INFORMATION ONLY):

Wells Fargo Bank  
2030 Main Street  
Suite 800  
Irvine, California 92714  
Attn: Jim Furuyama  
Telecopy 949/251-4343

Commitment: \$50,000,000  
33.333333%



BANK OF AMERICA, N.A.,  
as Syndication Agent and as a Lender

By: /s/ Megan McBride

-----  
Name: Megan McBride

-----  
Title: Principal  
-----

Address:  
231 S. LaSalle Street, 15th Floor  
Chicago, Illinois 60697  
Attn: Megan McBride  
Telecopy: 312/974-4970

Commitment: \$33,333,333.33  
22.222222%

LASALLE BANK NATIONAL  
ASSOCIATION, as Documentation Agent  
and as a Lender

By: /s/ Crystal DiDomenico

-----  
Name: Crystal DiDomenico

-----  
Title: Relationship Manager  
-----

Address:  
60 Wall Street, 22nd Floor  
New York, New York 10260-0060  
Attention: Crystal DiDomenico  
Telecopy: \_\_\_\_\_

Commitment: \$33,333,333.34  
22.222222%

COMMERZBANK AKTIENGESELLSCHAFT, New York  
Branch, as a Lender

By: /s/ David Buettner

-----  
Name: David Buettner

-----  
Title: Assistant Vice President  
-----

By: /s/ E. Marcus Perry

-----  
Name: E. Marcus Perry

-----  
Title: Assistant Vice President  
-----

Address:

1251 Avenue of the Americas  
New York, New York 10020  
Attention: David Buettner  
Telecopy: 212/400-5773

Commitment: \$33,333,333.33  
22.222222%

[WELLS FARGO LOGO]

## MODIFICATION AGREEMENT

Loan No. 31-0900553R

THIS MODIFICATION AGREEMENT ("Agreement") dated December 6, 2001 is entered into by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"), and MHC STAGECOACH, L.L.C., a Delaware limited liability company, ("Borrower").

## R E C I T A L S

- A. Pursuant to the terms of a promissory note dated July 31, 2001 executed by Borrower in favor of Lender ("Note"), Lender made a loan to Borrower in the principal amount of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is further evidenced by the documents described in the Note as "Loan Documents". The Note is secured by, among other things: (i) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Casa del Sol III Deed of Trust") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Peoria, Arizona; (ii) that certain Deed of Trust and Absolute Assignment of Rents And Leases and Security Agreement (And Fixture Filing) ("Apollo Village Deed of Trust") of even date therewith, executed by Borrower encumbering certain other real property and improvements located in Peoria, Arizona; (iii) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Woodland Hills Deed of Trust") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Thornton, Colorado; (iv) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Cabana Deed of Trust") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Las Vegas, Nevada; (v) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Pickwick Village Mortgage") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Port Orange, Florida; (vi) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Indian Oaks Mortgage") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Rockledge, Florida; and (vii) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Windmill Manor Mortgage") of even date therewith, executed by Borrower encumbering certain real property and improvements located in Bradenton, Florida. The Casa del Sol III Deed of Trust, the Apollo Village Deed of Trust, the Woodland Hills Deed of Trust, the Cabana Deed of Trust, the Pickwick Village Mortgage, the Indian Oaks Mortgage and the Windmill Manor Mortgage are referred to herein collectively and individually, as applicable, and as modified, extended or renewed, as the "Mortgage" or the "Mortgages."
- B. The Note, Mortgages, this Agreement, and the other documents described in the Note as "Loan Documents", together with all modifications and amendments thereto and any document required hereunder, are collectively referred to herein as the "Loan Documents".
- C. By this Agreement, Borrower and Lender intend to modify and amend certain terms and provisions of the Loan Documents.

NOW, THEREFORE, the parties agree as follows:

1. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Lender that no Default, breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under any of the Loan Documents (as modified by this Agreement) and that all representations and warranties therein are true and correct, which representations and warranties shall survive execution of this Agreement. Borrower also hereby represents, warrants and re-affirms to Lender that the representations and warranties contained in the Loan Documents are, to Borrower's current actual knowledge after reasonable investigation and inquiry, true and correct as of the date hereof.
2. MODIFICATION OF LOAN DOCUMENTS. The Loan Documents are hereby amended as follows:
  - 2.1 Section 3.6 of Exhibit A to the Note is hereby amended and restated in its entirety as follows:

"3.6 BORROWER LETTER OF CREDIT.

- a. Delivery to Lender. Lender has agreed that in lieu of the Capital Expenditure Impounds required by Subsection 3.1(c) above, Lender will accept and Borrower may deliver by November 14, 2001 an irrevocable standby letter of credit (such letter of credit, together with any replacement or renewal thereof, is referred to herein as the "Borrower Letter of Credit") in the aggregate principal amount of \$306,991 issued by an issuer reasonably acceptable to Lender in favor of Lender, in form and content reasonably satisfactory to Lender. Subject to the provisions of this Section 3.6, Lender shall retain custody of any Borrower Letter of Credit until such time as the Loan is repaid in full (other than through judicial or nonjudicial foreclosure of the Mortgages or deeds in lieu thereof).
- b. Right to Draw. Lender shall have the right to draw upon the Borrower Letter of Credit in the full amount thereof upon the occurrence of any Default. In the event that the Borrower Letter of Credit will not be renewed for any reason, Borrower shall either (a) deliver a substitute or replacement letter of credit in form and content reasonably satisfactory to Lender (a "Replacement Letter of Credit") prior to the date (the "Replacement Date") that is thirty (30) days prior to the expiration of the Borrower Letter of Credit or (b) elect to reinstate the Capital Expenditure Impounds by delivering to Lender the sum of \$61,308 (the "Reinstatement Deposit") prior to the Replacement Date and \$10,218 on each payment date thereafter for payment or reimbursement of Capital Expenditures. The failure of Borrower to either deliver a Replacement Letter of Credit or the Reinstatement Deposit prior to the Replacement Date shall be considered a Default under the Loan Documents, and Lender shall, in addition to any other remedy available to Lender under the Loan Documents, be entitled to draw upon the Borrower Letter of Credit in the full amount thereof.
- c. Application of Proceeds. The proceeds of any draw under the Borrower Letter of Credit shall be retained by Lender as Impounds and shall be governed by the terms and conditions of this Note and the other Loan Documents.
- d. Release of the Borrower Letter of Credit. Lender shall surrender the Borrower Letter of Credit to Borrower and refund to Borrower all sums drawn that Lender is holding (and that have not otherwise been applied or spent) at such time as the Loan is repaid in full (other than through judicial or nonjudicial foreclosure of the Mortgages or deeds in lieu thereof)."

2.2 All references to the term "Note" in the Loan Documents shall mean the Note, as amended hereby and as the same may hereafter be amended, restated, supplemented or modified from time to time.

2.3 The Mortgages and other Loan Documents which recite they are security instruments shall secure, in addition to any other obligations secured thereby, the payment and performance by Borrower of all obligations under (a) the Note, as amended hereby; and (b) this Agreement, as amended, modified, extended or renewed in writing by Borrower and Lender.

3. FORMATION AND ORGANIZATIONAL DOCUMENTS. Borrower has previously delivered to Lender all of the relevant formation and organizational documents of Borrower, of the partners or joint venturers of Borrower (if any), and of all guarantors of the Loan (if any), and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower hereby certifies that: (i) the above documents previously delivered to Lender are all of the relevant formation and organizational documents of Borrower; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were previously delivered to Lender.

4. NON-IMPAIRMENT. Except as expressly provided herein, nothing in this Agreement shall alter or affect any provision, condition, or covenant contained in the Note or any other Loan Document or affect or impair any rights, powers, or remedies of Lender, it being the intent of the parties hereto that the provisions of the Note and other Loan Documents shall continue in full force and effect except as expressly modified hereby.

5. MISCELLANEOUS. This Agreement and the other Loan Documents shall be governed by and interpreted in accordance with the laws of the State of California, except to the extent the same are preempted by Federal law. In any

action brought or arising out of this Agreement or the Loan Documents, Borrower, and the general partners and joint venturers of Borrower (if any), hereby consent to the jurisdiction of any Federal or State Court having proper venue within the State of California and also consent to the service of process by any means authorized by California or federal law. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. Except as expressly provided otherwise herein, all terms used herein shall have the meaning given to them in the other Loan Documents. Time is of the essence of each term of the Loan Documents, including this Agreement. If any provision of this Agreement or any of the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof.

6. INTEGRATION; INTERPRETATION. The Loan Documents, including this Agreement, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations. The Loan Documents shall not be modified except by written instrument executed by all parties.
7. EXECUTION IN COUNTERPART. This Agreement, and other Loan Documents which expressly so provide, may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be duly executed as of the date first above written.

"LENDER"

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By: /s/ Steven R. Lowery

-----  
Name: Steven R. Lowery  
Title: Vice President

"BORROWER"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

GUARANTOR'S CONSENT

The undersigned ("Guarantor") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Limited Guaranty ("Guaranty") dated July 31, 2001, and its waivers, as set forth in the Guaranty, of each and every one of the possible defenses to such obligations. Guarantor further reaffirms that its obligations under the Guaranty are separate and distinct from the obligations of Borrower (as defined in the Guaranty).

AGREED:

Dated as of: December 6, 2001

"GUARANTOR"

MANUFACTURED HOME COMMUNITIES, INC.,  
a Maryland corporation

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer



PROMISSORY NOTE SECURED BY MORTGAGES

\$50,000,000.00

Loan No. 31-0900553R  
San Francisco, California  
July 31, 2001

THIS PROMISSORY NOTE SECURED BY MORTGAGES (this "Note") is made and entered into by and between MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower"), and WELLS FARGO NATIONAL BANK, NATIONAL ASSOCIATION ("Lender").

1. PROMISE TO PAY. For value received, Borrower promises to pay to the order of Lender, at 1320 Willow Pass Road, Suite 205, Concord, California 94520, or at such other place as may be designated in writing by Lender, the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"), with interest thereon as specified herein. All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds, without offset, deduction or counterclaim of any kind.
2. SECURED BY MORTGAGES. This Note is secured by, among other things: (i) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Casa del Sol III Deed of Trust") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Peoria, Arizona, as more particularly described therein ("Casa del Sol III Property"); (ii) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Apollo Village Deed of Trust") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Peoria, Arizona, as more particularly described therein ("Apollo Village Property"); (iii) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Woodland Hills Deed of Trust") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Thornton, Colorado, as more particularly described therein ("Woodland Hills Property"); (iv) that certain Deed of Trust and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Cabana Deed of Trust") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Las Vegas, Nevada and as more particularly described therein ("Cabana Property"); (v) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Pickwick Village Mortgage") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Port Orange, Florida, as more particularly described therein ("Pickwick Village Property"); (vi) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Indian Oaks Mortgage") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Rockledge, Florida, as more particularly described therein ("Indian Oaks Property"); and (vii) that certain Mortgage and Absolute Assignment of Rents and Leases and Security Agreement (And Fixture Filing) ("Windmill Manor Mortgage") of even date herewith, executed by Borrower encumbering certain real property and improvements located in Bradenton, Florida, as more particularly described therein ("Windmill Manor Property"). The Casa del Sol III Deed of Trust, the Apollo Village Deed of Trust, the Woodland Hills Deed of Trust, the Cabana Deed of Trust, the Pickwick Village Mortgage, the Indian Oaks Mortgage and the Windmill Manor Mortgage are referred to herein collectively and individually, as applicable, and as modified, extended or renewed, as the "Mortgage" or the "Mortgages." The Casa del Sol III Property, the Apollo Village Property, the Woodland Hills Property, the Cabana Property, the Pickwick Village Property, the Indian Oaks Property and the Windmill Manor Property are referred to herein collectively and individually, as applicable, as the "Property" or the "Properties."
3. DEFINITIONS. For the purposes of this Note, the following terms shall have the following meanings:

"Affiliate" shall mean, as to any specified Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such specified Person.

"Business Day" shall mean any day other than a Saturday, Sunday, legal holiday or other day on which commercial banks in California are authorized or required by law to close. All references in this Note to a "day" or a "date" shall be to a calendar day unless specifically referenced as a Business Day.

"Control" shall mean with respect to any specified Person either (i) ownership directly or through other entities of more than 100% of all beneficial equity interest in such Person and (ii) the power to direct the management, operation and business of such person.

"Debt Service Coverage Ratio" shall mean, as of the last day of the calendar month immediately preceding the applicable calculation date, the ratio in which (a) the numerator is the sum of the Net Operating Income for each of the applicable Properties for the immediately preceding twelve month period and (b) the denominator is the aggregate amount of principal and interest that would be due under this Note for such period based upon a debt service constant of seven and 97/100ths percent (7.97%).

"Default" shall have the meaning set forth in the Mortgages.

"Disbursement Date" shall mean the date upon which the Loan proceeds are funded into escrow in connection with the closing of the Loan.

"Effective Date" shall mean the date Lender authorizes the Loan proceeds to be released to Borrower.

"Loan Documents" shall mean the documents listed in Exhibit B attached hereto and incorporated herein by this reference.

"Loan-to-Value Ratio" shall mean, as of the last day of the calendar month immediately preceding the applicable calculation date, the ratio in which (a) the numerator is the aggregate amount of principal and interest then due under this Note and (b) the denominator is the "as-is" value of the applicable Properties as set forth in the appraisals for such Properties.

"Maturity Date" shall mean September 1, 2011.

"Net Operating Income" shall mean, with respect to a Property, (i) the rental payments actually received by Borrower ("Gross Rents"); plus (ii) the expense reimbursements actually received by Borrower ("Expense Reimbursements"); minus the sum of (w) an adjustment for vacancy/collection losses equal to the greater of actual, market or five percent (5%) of the Gross Rents and Expense Reimbursements; and (x) the actual Operating Expenses; and (y) an amount for reasonable management expenses equal to the greater of (A) four percent (4%) of Gross Rents or (B) actual management expenses; and (z) a capital improvement reserve equal to \$17,612 for the Casa del Sol III Property, \$16,450 for the Apollo Village Property, \$28,644 for the Woodland Hills Property, \$13,150 for the Cabana Property, \$21,600 for the Pickwick Village Property, \$10,550 for the Indian Oaks Property, and \$14,600 for the Windmill Manor Property, and such amount as shall be reasonably determined by Lender for any Replacement Property (as hereinafter defined).

"Operating Expenses" shall mean, with respect to a Property, all reasonable operating expenses of such Property, including, without limitation, those for maintenance, repairs, annual taxes, bond assessments, ground lease payments, insurance, utilities, and other annual expenses (but not capital expenses) that are standard and customary for properties of this type. Operating Expenses for this purpose shall not include any interest or principal payments on the Loan or any allowance for depreciation.

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

"Property Worth" shall mean the fair market value of the Property or Properties owned by Borrower as of the Disbursement Date.

"Rating Agency" shall mean each of Standard & Poor's Ratings Services, Moody's Investors Services, Inc., and Fitch IBCA, Inc., and their successors or assigns, or any other nationally recognized statistical rating agency which rates securities in connection with a securitization.

"Remaining Properties" shall mean all of the Properties other than those that have been released or requested to be released from the lien of the applicable Mortgage pursuant to a Defeasance (hereinafter defined in Section 14) or in exchange for a Replacement Property.

4. INTEREST; PAYMENTS.

4.1 DEFINITIONS. The following terms shall have the meanings indicated:

"Actual/360 Basis" shall mean on the basis of a 360-day year and charged on the basis of actual days elapsed for any whole or partial month in which interest is being calculated.

"30/360 Basis" shall mean on the basis of a 360-day year consisting of 12 months of 30 days each.

"Interest Rate" shall mean a fixed interest rate equal to 6.98%.

4.2 INTEREST ACCRUAL. Interest on the outstanding principal balance of this Note shall accrue from the Disbursement Date at an annual rate equal to the Interest Rate calculated on an Actual/360 Basis.

4.3 PAYMENTS. Monthly payments hereunder shall commence on the first day of the calendar month following the Disbursement Date and continue on the first day of each calendar month thereafter through the Maturity Date. If the Disbursement Date is a date other than the first day of a calendar month, the first monthly payment shall be interest only. Subsequent monthly payments shall be calculated on the basis of an equal-payment thirty (30) year amortization of principal and interest. Notwithstanding that interest on this Note accrues on an Actual/360 Basis, the total amount of each such amortized monthly payment of principal and interest shall be determined using a 30/360 Basis. On the Maturity Date, all unpaid principal and accrued but unpaid interest shall be due and owing in full. All interest shall be paid in arrears.

4.4 ACKNOWLEDGMENTS. Borrower acknowledges that interest calculated on an Actual/360 Basis exceeds interest calculated on a 30/360 Basis and, therefore: (a) a greater portion of each monthly installment of principal and interest will be applied to interest using the Actual/360 Basis than would be the case if interest accrued on a 30/360 Basis; and (b) the unpaid principal balance of this Note on the Maturity Date will be greater using the Actual/360 Basis than would be the case if interest accrued on a 30/360 Basis.

4.5 APPLICATION OF PAYMENTS. In the absence of a specific determination by Lender to the contrary, all payments paid by Borrower to Lender in connection with the obligations of Borrower under this Note and under the other Loan Documents shall be applied in the following order of priority: (a) to amounts, other than principal and interest, due to Lender pursuant to this Note or the other Loan Documents; (b) to accrued but unpaid interest on this Note; and (c) to the unpaid principal balance of this Note. Upon the occurrence of a Default: (i) Borrower irrevocably waives the right to direct the application of any and all payments at any time thereafter received by Lender from or on behalf of Borrower, and (ii) Borrower irrevocably agrees that Lender shall have the continuing exclusive right to apply any and all such payments against the then due and owing obligations of Borrower in such order of priority as Lender may deem advisable.

5. LATE CHARGE; DEFAULT RATE.

5.1 LATE CHARGE. If any payment required hereunder is not paid on or before the fifth calendar day of the month in which it is due, Borrower shall pay a late or collection charge, as liquidated damages, equal to 4% of the amount of such unpaid payment. Borrower acknowledges that Lender will incur additional expenses as a result of any late payments hereunder, which expenses would be impracticable to quantify, and that Borrower's payments under this paragraph are a reasonable estimate of such expenses. The foregoing to the contrary notwithstanding, no late or collection charge shall be payable by Borrower as a result of any delay in the payment of any sum due and payable on the Maturity Date.

5.2 DEFAULT RATE. Commencing upon a Default and continuing until such Default shall have been cured by Borrower, all sums owing on this Note shall bear interest until paid in full at a rate per annum equal to 5% plus the Interest Rate ("Default Rate").

6. MAXIMUM RATE PERMITTED BY LAW. Neither this Note nor any of the other Loan Documents shall require the payment or permit the collection of any interest or any late payment charge in excess of the maximum rate permitted by law. If any such excess interest or late payment charge is provided for under this Note or any of the other Loan Documents or if this Note or any of the other Loan Documents shall be adjudicated to provide for such excess, neither



Borrower nor Borrower's successors or assigns shall be obligated to pay such excess, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any other provision of this Note or any of the other Loan Documents. If Lender shall collect amounts which are deemed to constitute interest and which would increase the effective interest rate to a rate in excess of the maximum rate permitted by law, all such amounts deemed to constitute interest in excess of the maximum legal rate shall, upon such determination, at the option of Lender, be returned to Borrower or credited against the outstanding principal balance of this Note.

7. ACCELERATION. If (a) Borrower shall fail to pay when due, subject to any applicable grace or cure period, any sums payable under this Note; (b) any other Default shall occur; or (c) any other event or condition shall occur which, under the terms of any of the Mortgages or any other Loan Document, gives rise to a right of acceleration of sums owing under this Note, then Lender, at its sole option, shall have the right to declare all sums owing under this Note immediately due and payable; provided, however, that if any of the Mortgages or any other Loan Document provides for the automatic acceleration of payment of sums owing under this Note, all sums owing under this Note shall be automatically due and payable in accordance with the terms of such of the Mortgages or such other Loan Document.

8. BORROWER'S LIABILITY.

8.1 LIMITATION. Except as otherwise provided in this Section 8, Lender's recovery against Borrower under this Note and the other Loan Documents shall be limited solely to the Properties and the "Collateral" (as defined in the Mortgages).

8.2 EXCEPTIONS. Nothing contained in Section 8.1 or elsewhere in this Note or the other Loan Documents, however, shall limit in any way the personal liability of Borrower owed to Lender for any losses or damages incurred by Lender (including, without limitation, any impairment of Lender's security for the Loan) with respect to any of the following matters: (a) fraud or willful misrepresentation; (b) material physical waste of the Properties (or any portions thereof) or the Collateral; (c) failure to pay property or other taxes, assessments or charges (other than amounts paid to Lender for taxes, assessments or charges pursuant to Impounds as defined in Exhibit A and where Lender elects not to apply such funds toward payment of the taxes, assessments or charges owed) which may create liens senior to the lien of any of the Mortgages on all or any portion of the Properties; (d) failure to deliver any insurance or condemnation proceeds or awards or any security deposits received by Borrower to Lender as required under the terms of the Loan Documents or any other instrument now or hereafter securing this Note or to otherwise apply such sums as required under the terms of the Loan Documents or any other instrument now or hereafter securing this Note; (e) failure to apply any rents, royalties, accounts, revenues, income, issues, profits and other benefits from the Properties (or any portion thereof) which are collected or received by Borrower during the period of any Default or after acceleration of the indebtedness and other sums owing under the Loan Documents to the payment of either (i) such indebtedness or other sums or (ii) the normal and necessary operating expenses of the Properties; or (f) any breach by Borrower of any covenant in this Note or in any of the Mortgages regarding Hazardous Materials (as defined in the Mortgages) or any representation or warranty of Borrower regarding Hazardous Materials proving to have been untrue when made.

8.3 NO RELEASE OR IMPAIRMENT. Nothing contained in Section 8.1 shall be deemed to release, affect or impair the indebtedness evidenced by this Note or the obligations of Borrower under, or the liens and security interests created by the Loan Documents, or Lender's rights to enforce its remedies under this Note and the other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief, or any suit or action in connection with the preservation, enforcement or foreclosure of the liens, mortgages, deeds of trust, assignments and security interests which are now or at any time hereafter security for the payment and performance of all obligations under this Note or the other Loan Documents.

8.4 PREVAIL AND CONTROL. The provisions of this Section 8 shall prevail and control over any contrary provisions elsewhere in this Note or the other Loan Documents.

9. NON-MORTGAGOR BORROWER. If Borrower is not also a "Mortgagor" under the Mortgages, Borrower hereby makes all representations and warranties in favor of Lender contained in Article 5 of the Mortgages, all covenants contained in Section 6.15 of the Mortgages, and all indemnities of Lender contained in Section 6.19 of the Mortgages, jointly and severally with the "Mortgagor" under each of the Mortgages.



10. MISCELLANEOUS.

- 10.1 JOINT AND SEVERAL LIABILITY. If this Note is executed by more than one person or entity as Borrower, the obligations of each such person or entity shall be joint and several. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable hereunder.
- 10.2 WAIVER OF PRESENTMENT. Except as otherwise provided herein or in any other Loan Document, Borrower hereby waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of nonpayment, notice of costs, expenses or losses and interest thereon, and notice of interest on interest and late charges.
- 10.3 DELAY IN ENFORCEMENT. No previous waiver or failure or delay by Lender in acting with respect to the terms of this Note or the Mortgages shall constitute a waiver of any breach, default or failure of condition under this Note, the Mortgages or the obligations secured thereby. A waiver of any term of this Note, the Mortgages or of any of the obligations secured thereby must be made in writing signed by Lender, shall be limited to the express terms of such waiver, and shall not constitute a waiver of any subsequent obligation of Borrower. The acceptance at any time by Lender of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable.
- 10.4 TIME OF THE ESSENCE. Time is of the essence with respect to every provision hereof.
- 10.5 GOVERNING LAW. This Note was accepted by Lender in the state of California and the proceeds of this Note were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Note, the Mortgages and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 foreclosure of the liens granted under the Mortgages securing this Note and the creation, perfection and enforcement of the security interests created pursuant thereto and pursuant to the other Loan Documents shall be governed by and construed according to the law of the states where the Properties are located. Except as provided in the immediately preceding sentence, Borrower hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs the Mortgages, this Note and the other Loan Documents.
- 10.6 CONSENT TO JURISDICTION. Borrower irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Borrower against Lender, arising out of or relating to this Note or the Loan evidenced hereby; (b) any state or federal court sitting in any of the states where the Properties are located or the state in which Borrower's principal place of business is located over any suit, action or proceeding, brought by Lender against Borrower, arising out of or relating to this Note or the Loan evidenced hereby; and (c) any state court sitting in any of the counties of the states where the Properties are located over any suit, action, or proceeding, brought by Lender to exercise its rights of foreclosure under the applicable Mortgage or any action brought by Lender to enforce its rights with respect to the Collateral. Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 10.7 COUNTERPARTS. This Note may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall be deemed to be one and the same Note.
- 10.8 HEIRS, SUCCESSORS AND ASSIGNS. All of the terms, covenants, conditions and indemnities contained in this Note and the other Loan Documents shall be binding upon the heirs, successors and assigns of Borrower and shall inure to the benefit of the successors and assigns of Lender. The foregoing sentence shall not be construed to

permit Borrower to assign the Loan except as otherwise permitted in this Note or the other Loan Documents.

10.9 SEVERABILITY. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or



circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

10.10 CONSENTS, APPROVALS AND EXPENSES. Wherever Lender's consent, approval, acceptance or satisfaction is required under any provision of this Note (including, without limitation, Exhibits A and B hereto) or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Lender unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Note or any of the other Loan Documents, such costs or expenses shall be reasonable.

11. NOTICES. All requests, demands, notices and other communications that are required or permitted to be given to a party under this Note shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the address or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses and facsimile numbers of the parties shall be:

Borrower:

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MHC Stagecoach, L.L.C.  
c/o Manufactured Home Communities, Inc.  
Two North Riverside Plaza  
Suite 800  
Chicago, Illinois 60606  
Attention: General Counsel  
FAX No.: (312) 279-1715

Lender:

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Wells Fargo Bank, N.A.  
1320 Willow Pass Road, Suite 205  
Concord, CA 94520  
Loan No. 31-0900553R  
FAX No.: (925) 691-5947

With a copy to:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, IL 60606-1288  
Attention: Benjamin J. Randall  
FAX No.: (312) 807-3903

12. ADDITIONAL TERMS AND CONDITIONS. The additional terms and conditions set forth in Exhibit A and Exhibit B attached hereto are incorporated herein by this reference.

13. PREPAYMENT. Borrower acknowledges that any prepayment of this Note will cause Lender to lose its interest rate yield on this Note and will possibly require that Lender reinvest any such prepayment amount in loans of a lesser interest rate yield (including, without limitation, in debt obligations other than first mortgage loans on commercial properties). As a consequence, Borrower agrees as follows, as an integral part of the consideration for Lender's making the Loan:

13.1 RESTRICTIONS. Any voluntary prepayment of this Note: (a) is prohibited except during the last 3 months of the term, (b) is permitted in full only, and not in part, and (c) may only be made on the first day of a month.

13.2 PREPAYMENT CHARGE. Except as provided below, if this Note is prepaid prior to the last three (3) months of the term, whether such prepayment is involuntary or upon acceleration of the principal amount of this Note by Lender following a Default, Borrower shall pay to Lender on the prepayment date (in addition to all other sums then due and owing to Lender under the Loan Documents) a prepayment charge equal to the greater of the following two amounts: (a) an amount equal to 1% of the then outstanding principal balance of the Loan; or (b) an amount equal to (i) the amount, if any, by which the sum of the present values as of the prepayment date of all unpaid principal and interest payments required under this Note, calculated by discounting such payments from their respective scheduled payment dates back to the prepayment date at a discount rate equal to the Periodic Treasury Yield (defined below) exceeds the outstanding principal balance of the Loan as of the prepayment date, multiplied by (ii) a fraction whose numerator is the amount of the prepayment and whose denominator is the outstanding principal balance of the Loan as of the prepayment date. Notwithstanding the

foregoing, no prepayment charge shall apply in respect to any insurance or condemnation proceeds received by Lender and applied by Lender to the outstanding principal balance of the Loan. For purposes of the foregoing, "Periodic Treasury Yield" means (c) the annual yield to maturity of the actively traded non-callable United States Treasury fixed interest rate security (other than any such security which can be surrendered at the option of the holder at face value in payment of federal estate tax or which was issued at a substantial discount) that has a maturity closest to (whether before, on or after) the Maturity Date (or if two or more such securities have maturity dates equally close to the Maturity Date, the average annual yield to maturity of all such securities), as reported in The Wall Street Journal or other authoritative publication or news retrieval service on the fifth Business Day preceding the prepayment date, divided by (d) 12, if scheduled payment dates are monthly, or 4, if scheduled payment dates are quarterly.

- 13.3 WAIVER. Borrower waives any right to prepay this Note except under the terms and conditions set forth in this Section and agrees that if this Note is prepaid, Borrower will pay the prepayment charge set forth above. Borrower hereby acknowledges that: (a) the inclusion of this waiver of prepayment rights and agreement to pay the prepayment charge for the right to prepay this Note was separately negotiated with Lender; (b) the economic value of the various elements of this waiver and agreement was discussed; (c) the consideration given by Borrower for the Loan was adjusted to reflect the specific waiver and agreement negotiated between Borrower and Lender and contained herein; and (d) this waiver is intended to comply with California Civil Code Section 2954.10.

Borrower's Initials: \_\_\_\_\_

- 13.4 INSURANCE PROCEEDS; CONDEMNATION AWARDS. Notwithstanding anything herein to the contrary, no prepayment charge shall be due and owing with respect to any involuntary prepayment resulting from Lender's application of any insurance proceeds or condemnation awards to the Loan.

14. DEFEASANCE. At any time after the Lockout Expiration Date (defined below), Borrower may elect to cause Lender to release one or more of the Properties from the lien of any of the Mortgages and the other Loan Documents and to accept other collateral in substitution therefor, in accordance with the provisions of this Section ("Defeasance"), at Borrower's sole cost and expense. "Lockout Expiration Date" means the earlier of (a) the second anniversary of the "startup day" (as defined in Internal Revenue Code Section 860(G)(a)(9)) of any "real estate mortgage investment conduit" (as defined in Internal Revenue Code Section 860D) that holds this Note and (b) the third anniversary of the date of this Note. For purposes of this Section 14 only, (a) the values of the Casa del Sol III Property, the Apollo Village Property, the Woodland Hills Property, the Cabana Property, the Pickwick Village Property, the Indian Oaks Property and the Windmill Manor Property, expressed as a percentage of the total principal amount of the Loan ("Allocated Loan Percentage"), shall be deemed to be 13.3%, 10.6%, 23.6%, 16.9%, 16.8%, 6.2%, and 12.6%, respectively; and (b) the portion of the principal amount of the Loan allocable to each of the Properties ("Allocated Loan Amount") shall be deemed initially to be the Allocated Loan Percentage for such Property multiplied by the initial total principal amount of the Loan and, thereafter, the same such amount as the same shall be reduced by ratable application of payments of principal made under this Note from time to time.

- 14.1 CONDITIONS. Borrower shall only have the right to cause a Defeasance if no Default has occurred and is continuing and all of the following conditions have been satisfied:

- a. Notice. Borrower shall give at least 60 days but not more than 90 days' written notice to Lender specifying the date of Borrower's intended Defeasance ("Release Date"), which date shall be a scheduled payment date and such notice shall indicate the principal amount of the Note to be defeased;
- b. Payments. Borrower shall pay in full, on or before the Release Date, all accrued and unpaid interest and all other sums due under this Note and the other Loan Documents on or before the Release Date, including, without limitation, (i) all costs and expenses paid or incurred by Lender or its agents in connection with the Defeasance, the purchase of the Defeasance Collateral (defined below), the release of the applicable Properties, the review of the proposed Defeasance Collateral and the preparation of the Defeasance Security Agreement (defined below) and related documentation, and (ii) any revenue, documentary stamp, intangible or other taxes, charges

or fees due in connection with the transfer or assumption of this Note or the Defeasance;

- c. Deliveries. Borrower shall deliver the following items to Lender on or before the Release Date:

- (i) immediately available funds ("Defeasance Deposit") in an amount sufficient to enable Lender to purchase, through means and sources customarily employed and available to Lender, for the account of Borrower, direct, non-callable obligations of the United States of America that provide for payments prior, but as close as possible, to all successive scheduled payment dates occurring after the Release Date, with each such payment being equal to or greater than one hundred twenty five percent (125%) of the product of the Allocated Loan Percentage for the Properties that are the subject of the applicable Defeasance multiplied by the installments of principal and interest required to be paid under this Note (including, without limitation, all amounts due on the Maturity Date) for the balance of the term hereof ("Defeasance Collateral"), each of which shall be duly endorsed by the holder as directed by Lender or accompanied by a written instrument of transfer in form and substance satisfactory to Lender in its sole discretion (including, without limitation, such instruments as may be required by the depository institution holding such securities or the issuer of such securities, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the Defeasance Security Agreement (as defined below) the first priority security interest in the Defeasance Collateral in favor of Lender;
- (ii) a pledge and security agreement, in form and substance satisfactory to Lender in its reasonable discretion, creating a first priority security interest in favor of Lender in the Defeasance Collateral ("Defeasance Security Agreement"), which shall provide, among other things, that any payments generated by the applicable Defeasance Collateral shall be paid directly to Lender and applied by Lender to amounts then due and payable under this Note allocable to the Allocated Loan Amount for the Properties that are the subject of the applicable Defeasance and that any excess received by Lender from the applicable Defeasance Collateral over the amounts payable by Borrower under this Note allocable to the Allocated Loan Amount for the Properties that are the subject of the applicable Defeasance shall be first, paid to Lender and applied by Lender to any other amounts then due and payable under this Note, and second, refunded to Borrower promptly after each scheduled payment date;
- (iii) a certificate of Borrower certifying that all of the requirements of this Section 14.1 have been satisfied;
- (iv) an opinion of counsel for Borrower in form and substance and delivered by counsel satisfactory to Lender in its sole discretion, subject, however, to standard enforceability opinion qualifications and limitations, stating, among other things, that (aa) Lender has a perfected first priority security interest in the Defeasance Collateral, (bb) the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms and (cc) any REMIC Trust formed pursuant to a securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Internal Revenue Code Section 860D, as amended from time to time, or any successor statute, as a result of the Defeasance;
- (v) a certificate from a firm of independent certified public accountants acceptable to Lender certifying that the Defeasance Collateral satisfies the requirements of Section 14.1c(i);
- (vi) written evidence from the applicable Rating Agencies that the Defeasance will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to the Defeasance for any securities issued in connection with the securitization which are then outstanding;
- (vii) a conveyance of title to the Property to be released to a Person other than Borrower; and

(viii) such other certificates, documents or instruments as Lender may reasonably require, including, without limitation, such amendments to this Note and the other Loan Documents as Lender reasonably deems appropriate to reflect the Defeasance.

14.2 RELEASE OF LIEN. Upon satisfaction of all conditions specified above with respect to any Defeasance, the Property subject to such Defeasance shall be released from the lien of the applicable Mortgage and the other Loan Documents to which it is subject, and the applicable Defeasance Collateral, any Defeasance Collateral previously delivered to Lender under this Note, the Remaining Properties and the proceeds thereof shall constitute the only collateral which shall secure the obligations of Borrower under this Note and the other Loan Documents. Simultaneously with the release of a Property pursuant to this Section, Lender shall release that portion of all cash or other accounts maintained pursuant to the Loan Documents relating to such Property. Lender shall, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the applicable Mortgage from the applicable Property. Upon any Defeasance, this Note shall be automatically amended such that the Allocated Loan Percentage for each of the Remaining Properties after such Defeasance shall be equal to (A) one hundred (100) times (B) the Allocated Loan Percentage for such Remaining Property immediately prior to such Defeasance divided by (C) the sum of the Allocated Loan Percentages for all of the Remaining Properties immediately prior to such Defeasance (such that at all times the sum of the Allocated Loan Percentages for all Remaining Properties shall be equal to one hundred percent (100%)).

14.3 DEFEASANCE DEPOSIT. Borrower hereby authorizes and directs Lender, using the means and sources customarily employed and available to Lender, to use the Defeasance Deposit to purchase the Defeasance Collateral as agent and for the account of Borrower. Payments from the Defeasance Collateral shall be made directly to Lender for application to the Loan as provided hereinabove. Any part of the Defeasance Deposit exceeding the amount necessary to purchase the Defeasance Collateral and to pay the other costs which Borrower is obligated to pay under this Section 14 shall be refunded to Borrower. Borrower agrees to pay all sums referred to in Section 14.1b above on or before the Release Date.

14.4 ASSIGNMENT AND ASSUMPTION. Upon the release of any of the Properties in accordance with this Section 14, Borrower shall, at the request of Lender, assign all of its right, title and interest in and to the pledged Defeasance Collateral, any Defeasance Collateral previously delivered to Lender under this Note and all its obligations and rights under this Note, the Defeasance Security Agreement, any Defeasance Security Agreement previously delivered to Lender under this Note and the other Loan Documents, to a successor entity designated by Borrower and approved by Lender in its sole discretion. Such successor entity shall execute an assumption agreement in form and substance satisfactory to Lender in its sole discretion pursuant to which it shall assume Borrower's obligations under this Note, the Defeasance Security Agreement, any Defeasance Security Agreement previously delivered to Lender under this Note and the other Loan Documents. As conditions to such assignment and assumption, Borrower shall: (a) deliver to Lender a new limited guaranty in form and substance satisfactory to Lender in its sole discretion executed by the principals of such successor entity; (b) deliver to Lender an opinion of counsel in form and substance and delivered by counsel satisfactory to Lender in its sole discretion subject, however, to standard enforceability opinion qualifications and limitations, stating, among other things, that such assumption agreement is enforceable against Borrower and such successor entity in accordance with its terms and that this Note, the Defeasance Security Agreement, any Defeasance Security Agreement previously delivered to Lender under this Note and the other Loan Documents, as so assumed, are enforceable against such successor entity in accordance with their respective terms; and (c) pay all costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, the review of the proposed transferee and the preparation of the assumption agreement and related documentation). Upon such assumption, Borrower shall be relieved of its obligations under this Note, the Defeasance Security Agreement, any Defeasance Security Agreement previously delivered to Lender under this Note and the other Loan Documents other than those obligations which are specifically intended to survive the payment of the Loan or other termination, satisfaction or assignment of this Note, the Defeasance Security Agreement, any Defeasance Security Agreement previously delivered to Lender under this Note or the other Loan Documents or Lender's exercise of its rights and remedies under any of such documents and instruments.

15. WAIVER OF JURY TRIAL. LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR

ACTIONS OF LENDER OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE

LOAN TO BORROWER. BY ACCEPTANCE OF THIS EXECUTED NOTE, LENDER AGREES TO THE FOREGOING WAIVER.

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"BORROWER"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

EXHIBIT A TO PROMISSORY NOTE  
ADDITIONAL TERMS AND CONDITIONS

This Exhibit A is attached to and forms a part of that Promissory Note Secured by Mortgages ("Note") executed by MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

1. DISBURSEMENT OF LOAN PROCEEDS; LIMITATION OF LIABILITY. Borrower hereby authorizes Lender to disburse the proceeds of the Loan, after deducting any and all fees owed by Borrower to Lender in connection with the Loan, to Commonwealth Land Title Insurance Company (the "Title Company"). With respect to such disbursement, Borrower understands and agrees that Lender does not accept responsibility for errors, acts or omissions of others, including, without limitation, the escrow company, other banks, communications carriers or clearinghouses through which the transfer of Loan proceeds may be made or through which Lender receives or transmits information, and no such entity shall be deemed Lender's agent. As a consequence, Lender shall not be liable to Borrower for any actual (whether direct or indirect), consequential or punitive damages which may arise with respect to the disbursement of Loan proceeds, whether or not (a) any claim for such damages is based on tort or contract, or (b) either Lender or Borrower knew or should have known of the likelihood of such damages in any situation.
2. FINANCIAL STATEMENTS.
  - 2.1 STATEMENTS REQUIRED. During the term of the Loan and while any liabilities of Borrower to Lender under any of the Loan Documents remain outstanding and unless Lender otherwise consents in writing, Borrower shall provide to Lender the following:
    - a. OPERATING STATEMENT. Not later than 10 days after and as of each calendar month during the first 6 months of the term of the Loan, and thereafter not later than 30 days after and as of the end of each calendar quarter, an operating statement, signed and dated by Borrower and in a form acceptable to Lender, showing all revenues and expenses during such month or quarter and year-to-date, relating to each of the Properties, including, without limitation, all information requested under any of the Loan Documents;
    - b. RENT ROLL. Not later than 10 days after and as of each calendar month during the first 6 months of the term of the Loan, and thereafter not later than 30 days after and as of the end of each calendar quarter, a rent roll signed and dated by Borrower and in a form acceptable to Lender, showing the following lease information with regard to each tenant: the name of the tenant, monthly or other periodic rental amount, date of commencement of the lease, and payment status;
    - c. BALANCE SHEET. If requested by Lender, not later than 90 days after and as of the end of each fiscal year, a balance sheet, signed and dated by Borrower and in a form acceptable to Lender (or audited financial statements if Borrower obtains them), showing all assets and liabilities of Borrower; and
    - d. OTHER INFORMATION. From time to time, upon Lender's delivery to Borrower of at least 10 days' prior written notice, such other information with regard to Borrower, principals of Borrower, guarantors or the Properties as Lender may reasonably request in writing.
  - 2.2 FORM; WARRANTY. Borrower agrees that all financial statements to be delivered to Lender pursuant to Section 2.1 shall: (a) be complete and correct in all material respects; (b) present fairly the financial condition of the party; (c) disclose all liabilities that are required to be reflected or reserved against; and (d) be prepared in accordance with the same accounting standard used by Borrower to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan or other accounting standards acceptable to Lender. Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such

financial statement except as disclosed by Borrower in a writing delivered to Lender. Borrower agrees that all rent rolls and other information to be delivered to Lender pursuant to Section 2.1 shall not contain any misrepresentation or omission of a material fact.

- 2.3 LATE CHARGE. If any financial statement, leasing schedule or other item required to be delivered to Lender pursuant to Section 2.1 is not timely delivered, Borrower shall promptly pay to Lender, as a late charge, the sum of \$500 per item. In addition, Borrower shall promptly pay to Lender an additional late charge of \$500 per item for each full month during which such item remains undelivered following written notice from Lender. Borrower acknowledges that Lender will incur additional expenses as a result of any such late deliveries, which expenses would be impracticable to quantify, and that Borrower's payments under this Section 2.3 are a reasonable estimate of such expenses. Notwithstanding anything to the contrary contained herein, once during each year of the term of the Loan Lender will give notice to Borrower of its failure to provide any item required to be delivered to Lender pursuant to Section 2.1 and if any such items are not delivered within three (3) Business Days following such notice, then at such time the late charge specified herein shall take effect.

### 3. IMPOUNDS.

- 3.1 AMOUNTS. Borrower shall deposit with Lender the amounts ("Impounds") stated below on the dates stated below, for the purpose of paying the costs stated below:

- a. TAXES. (i) \$364,529.00 on the Disbursement Date, and (ii) on the first payment date on which both principal and interest under the Loan are payable and on each payment date thereafter, an amount estimated from time to time by Lender in its reasonable discretion to be sufficient to pay for taxes and other liabilities payable by Borrower under Section 6.9 of each of the Mortgages. The initial estimated monthly amount to be deposited by Borrower on each payment date is \$46,881.00.
- b. INSURANCE. (i) \$35,144.00 on the Disbursement Date, and (ii) on the first payment date on which both principal and interest under the Loan are payable and on each payment date thereafter, an amount estimated from time to time by Lender in its reasonable discretion to be sufficient to pay for premiums for insurance payable by Borrower under Section 6.10 of each of the Mortgages. The initial estimated monthly amount to be deposited by Borrower on each payment date is \$4,393.00.
- c. CAPITAL EXPENDITURES. \$10,218 on the first payment date on which both principal and interest under the Loan are payable and on each payment date thereafter for payment or reimbursement of Capital Expenditures (defined below).

### 3.2 APPLICATION.

- a. TAXES. If no Default exists, Lender shall apply the Impounds in a timely fashion to the payment of the taxes and other liabilities stated above.
- b. INSURANCE. If no Default exists, Lender shall apply the Impounds to the payment of the insurance premiums stated above.
- c. CAPITAL EXPENDITURES. If no Default exists, Lender shall release the Impounds to Borrower once a quarter, no less than \$10,000.00 per release, to pay or reimburse Borrower for the Capital Expenditures (defined below); provided, however, that Lender shall have received and approved each of the following:
- (i) Borrower's written request for such release, describing the Capital Expenditures and certifying that all Capital Expenditures have been paid or incurred by Borrower for work completed lien-free and in a workmanlike manner;
- (ii) copies of invoices supporting the request for such release; and

(iii) if deemed necessary by Lender, an inspection report signed by an inspector selected by Lender, whose fees and expenses shall be paid by Borrower, and such other evidence as Lender shall reasonably require, confirming borrower's certification.

3.3 GENERAL. Any portion of the Impounds that exceeds the amount required for payment of the foregoing costs shall be repaid to Borrower upon Borrower's compliance with the foregoing. Reference is made to Section 6.12(b) of each of the Mortgages for a description of the account into which the Impounds shall be deposited and for a description of certain rights and remedies of Lender with respect to amounts in such account.

3.4 MAINTENANCE AND CONSTRUCTION.

a. CAPITAL EXPENDITURES. Borrower shall complete the lien-free performance or installation of the Capital Expenditures (as defined below) from time to time as necessary, in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations. "Capital Expenditures" shall mean major repairs and replacements to maintain or improve the Properties, including, without limitation, structural repairs, roof replacements, HVAC repairs and replacements, mechanical and plumbing repairs and replacements and boiler repair and replacements.

b. RIGHT OF INSPECTION. Lender shall have the right to enter upon the Properties at all reasonable times, subject to reasonable notice except in the event of an emergency, in which case no notice shall be required, to inspect all work for the purpose of verifying information disclosed or required pursuant to this Note, in a manner which does not unreasonably interfere with the operations on the Properties. Notwithstanding the foregoing, Lender shall not be obligated to supervise or inspect any work or to inform Borrower or any third party regarding any aspect of any work.

3.5 RELEASE. Lender shall release any Impounds to Borrower through a funds transfer of such Impounds initiated by Lender to the following account or such other account as Borrower specifies in a notice to Lender:

Bank Name: Bank of America  
-----  
ABA Routing No.: 071-000039  
-----  
Account Name: 7366-9-01095  
-----  
Reference: MHC Operating Limited Partnership  
-----  
Advise: Megan McBride (312) 828-6274  
-----

Lender will determine the funds transfer system and other means to be used in making each such release. Borrower agrees that each such funds transfer initiated by Lender will be deemed to be a funds transfer properly authorized by Borrower, even if the transfer is not actually properly authorized by Borrower. Borrower acknowledges that Lender will rely on the account number and ABA routing number set forth above or specified in a notice from Borrower to Lender, even if such account number identifies an account with a name different from the name so specified, or the routing number identifies a bank different from the bank so specified. If Borrower learns of any error in the transfer of any Impounds or of any transfer which was not properly authorized, Borrower shall notify Lender as soon as possible in writing but in no case more than 14 days after Lender's first confirmation to Borrower of such transfer.

3.6 LETTER OF CREDIT.

a. Delivery to Lender. Lender has agreed that in lieu of the Capital Expenditure Impounds required by Subsection 3.1(d) above, Lender will accept and Borrower may deliver within ten (10) Business Days after the Disbursement Date an irrevocable standby letter of credit (such letter of credit, together with any replacement or renewal thereof, is referred to herein as the "Borrower Letter of Credit") in the aggregate principal amount of \$306,991 issued by an issuer reasonably acceptable to Lender in favor of Lender, in form and content reasonably satisfactory to Lender. Subject to the provisions of this Section 3.6, Lender shall retain custody of any Borrower Letter of Credit until such time as the Loan is repaid in full (other than through judicial or nonjudicial foreclosure of the

Mortgages or deeds in lieu thereof).

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- b. Right to Draw. Lender shall have the right to draw upon the Borrower Letter of Credit in the full amount thereof upon the occurrence of (i) any Default or (ii) the receipt by Lender of notice stating that the Borrower Letter of Credit will not be renewed (as provided for in such Borrower Letter of Credit) and, in the event of such nonrenewal (whether by notice by the issuing bank or otherwise), the failure of Borrower to deliver a substitute or replacement letter of credit in form and content satisfactory to Lender prior to the date that is thirty (30) days prior to the expiration of the Borrower Letter of Credit.
- c. Application of Proceeds. The proceeds of any draw under the Borrower Letter of Credit shall be retained by Lender as Impounds and shall be governed by the terms and conditions of this Note and the other Loan Documents.
- d. Release of the Borrower Letter of Credit. Lender shall surrender the Borrower Letter of Credit to Borrower and refund to Borrower all sums drawn that Lender is holding (and have not otherwise been applied or spent) at such time as the Loan is repaid in full (other than through judicial or nonjudicial foreclosure of the Mortgage or deeds in lieu thereof).

4. ONE-TIME RIGHT OF TRANSFER OF PROPERTIES TO THIRD PARTY. Notwithstanding anything to the contrary contained in Section 6.15 of the Mortgages, Lender shall, one time only, consent to the voluntary sale or exchange of all (but not less than all) of the Properties to a bona-fide third party purchaser ("Transfer"), if no Default has occurred and is continuing, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a Default and all of the following conditions have been satisfied:

- 4.1 Lender receives at least sixty-five (65) days prior written notice of the proposed Transfer;
- 4.2 Lender's reasonable determination that the proposed purchaser, the proposed guarantor, if any, and the Properties all satisfy Lender's then applicable credit review and underwriting standards, taking into consideration, among other things, (a) any decrease in the Properties' cash flow which would result from any increase in real property taxes due to any anticipated reassessment of the Properties for tax purposes and (b) any then applicable requirement of Lender that such proposed borrowing entity constitute a single purpose asset and bankruptcy remote entity which, at the time of the Transfer, shall be in full compliance with the representations and covenants set forth in Section 5.2 of the Mortgages (as such representations may be reasonably modified by Lender after reviewing the ownership structure of the proposed borrowing entity);
- 4.3 if required by Lender, delivery to Lender of a non-consolidation opinion from a law firm reasonably acceptable to Lender and in form and substance reasonably satisfactory to Lender;
- 4.4 Lender's reasonable determination that the proposed purchaser possesses satisfactory recent experience in the ownership and operation of properties comparable to the Properties;
- 4.5 the execution and delivery to Lender of such documents and instruments as Lender shall reasonably require, in form and content reasonably satisfactory to Lender, including, without limitation, (i) an assumption agreement under which the purchaser assumes all obligations and liabilities of Borrower under this Note and the other Loan Documents and agrees to periodically pay such new or additional Impounds to Lender as Lender may reasonably require, and (ii) a consent to the Transfer by any existing guarantor and a reaffirmation of such guarantor's obligations and liabilities under any guaranty made in connection with the Loan or a new guaranty executed by a new guarantor reasonably satisfactory to Lender;
- 4.6 if required by Lender, delivery to Lender of evidence of title insurance reasonably satisfactory to Lender insuring Lender that the liens of the Mortgages and the priority thereof will not be impaired or affected by reason of such Transfer of the Properties;
- 4.7 payment to Lender of an assumption fee equal to 0.5% of the then outstanding principal balance of this Note;
- 4.8 if reasonably required by Lender, deposit with Lender of any new or additional Impounds;
- 4.9 reimbursement to Lender of any and all costs and expenses paid or incurred by Lender in connection with such Transfer, including, without limitation, all in-house or outside counsel attorneys' fees,

title insurance fees,

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appraisal fees, inspection fees, environmental consultants' fees and any fees or charges of the applicable Rating Agencies;

- 4.10 if required by Lender, delivery to Lender of written evidence from the applicable Rating Agencies that such Transfer will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to the Transfer for any securities issued in connection with the securitization of the Loan which are then outstanding; and
- 4.11 any third party consents or approvals that are required in order to consummate the contemplated transaction shall have been obtained and Lender shall be provided with satisfactory evidence of same.

Lender shall fully release Borrower and any existing guarantor from any further obligation or liability to Lender under this Note and the other Loan Documents upon the assumption by the purchaser and any new guarantor of all such obligations and liabilities and the satisfaction of all other conditions precedent to a Transfer in accordance with the provisions of this Section.

5. TRANSFER OF PROPERTY TO AN AFFILIATE. Notwithstanding anything to the contrary contained in Section 6.15 of the Mortgage, Lender shall one time only with respect to each of the Properties consent to the voluntary sale or exchange of such Property by deed to an Affiliate of Manufactured Home Communities, Inc. ("MHC") (such sale or exchange being herein referred to as an "Affiliate Transfer"), if no Default has occurred and is continuing, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a Default and all of the following conditions have been satisfied:

- 5.1 Lender receives at least sixty-five (65) days prior written notice of the proposed Affiliate Transfer;
- 5.2 Lender's reasonable determination that (a) such Property's cash flow will not be materially and adversely impacted due to any increase in real property taxes resulting from the Affiliate Transfer and (b) the Affiliate of MHC satisfies any then applicable requirement of Lender that such proposed borrowing entity constitute a single purpose asset and bankruptcy remote entity which, at the time of the transfer, shall be in full compliance with the representations and covenants set forth in Section 5.2 of the Mortgage encumbering such Property (as such representations may be reasonably modified by Lender after reviewing the ownership structure of the proposed borrowing entity);
- 5.3 if required by Lender, delivery to Lender of a non-consolidation opinion from a law firm reasonably acceptable to Lender and in form and substance reasonably satisfactory to Lender;
- 5.4 the execution and delivery to Lender of such documents and instruments as Lender shall reasonably require, in form and content reasonably satisfactory to Lender, including, without limitation, (i) an assumption agreement under which the purchaser assumes all obligations and liabilities of Borrower under this Note and the other Loan Documents and agrees to periodically pay such new or additional Impounds to Lender as Lender may reasonably require, and (ii) a consent to the Affiliate Transfer by any existing guarantor and a reaffirmation of such guarantor's obligations and liabilities under any guaranty made in connection with the Loan or a new guaranty executed by a new guarantor reasonably satisfactory to Lender;
- 5.5 if required by Lender, delivery to Lender of evidence of title insurance reasonably satisfactory to Lender insuring Lender that the lien of such Mortgage and the priority thereof will not be impaired or affected by reason of such Affiliate Transfer of any such Property;
- 5.6 reimbursement to Lender of any and all costs and expenses paid or incurred by Lender in connection with such Affiliate Transfer, including, without limitation, all in-house or outside counsel attorneys' fees, title insurance fees, appraisal fees, inspection fees, environmental consultants' fees and any fees or charges of the applicable Rating Agencies;
- 5.7 if required by Lender, delivery to Lender of written evidence from the applicable Rating Agencies that such Affiliate Transfer will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to the Affiliate Transfer for any securities issued in connection with the securitization of the Loan which are then outstanding; and





5.8 any third party consents or approvals that are required in order to consummate the contemplated transaction shall have been obtained and Lender shall be provided with satisfactory evidence of same.

Lender shall fully release Borrower from any further obligation or liability to Lender under this Note and the other Loan Documents upon the assumption by the Affiliate of all such obligations and liabilities and the satisfaction of all other conditions precedent to an Affiliate Transfer in accordance with the provisions of this Section. In addition to the Affiliate Transfers permitted above, Lender's consent shall not be required for the normal day to day trading of shares of MHC in the public securities market and such transactions shall not constitute an Affiliate Transfer hereunder.

6. REPLACEMENT PROPERTIES. Upon at least 65 days' but not more than 90 days' written notice to Lender specifying the date of Borrower's intended substitution ("Substitution Date"), which date shall be a scheduled payment date, Borrower may elect to cause Lender to release one or more of the Properties from the lien of the Mortgage encumbering such Property, provided that simultaneously with such release, Borrower shall execute and deliver to Lender, as security for the Loan, a mortgage, deed of trust or deed to secure debt, as applicable ("Replacement Mortgage"), encumbering a manufactured housing community property ("Replacement Property"), in substantially the same form as the Mortgage to be released, such other documents as Lender may reasonably require for the purpose of granting Lender a first priority, perfected lien on and security interest in such Replacement Property and all related rents, personal property, reserves and escrows on the same terms and conditions as the liens and security interests granted to Lender in such Property on the Effective Date, and such other modifications and amendments to the Loan Documents as may be necessitated due to the substitution of the Replacement Property for the Property that will be released (all of the foregoing, together with the Replacement Mortgage, the "Replacement Documents").

6.1 Borrower's right to obtain a release of a Property shall also be subject to the following conditions and restrictions:

- a. no Default shall have occurred and be continuing and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a Default;
- b. Borrower shall not, over the life of the Loan, be entitled to replace Properties having, in the aggregate, an Allocated Loan Amount of more than twenty-five percent (25%) of the Loan;
- c. at least sixty-five (65) days prior to the proposed date of such release, Lender shall have obtained an appraisal of the Replacement Property and, if required by Lender, updated appraisals of the Remaining Properties, prepared by Cushman & Wakefield, or such other third-party real estate professional that is approved by the Rating Agencies, indicating that the Loan-to-Value Ratio as of the date of such release, obtained by using the "as-is" value of the proposed Replacement Property set forth in such appraisal together with the "as-is" value of the Remaining Properties as of the date of such proposed release if new appraisals are required by Lender for the Remaining Properties, or as of the Disbursement Date if new appraisals are not required by Lender, is at least equal to the Loan-to-Value Ratio existing on the Disbursement Date which is sixty-four percent (64%);
- d. Lender shall have obtained a Phase I environmental report and, if recommended by such Phase I report, a Phase II environmental report prepared by SI Group, or such other environmental consultant as is approved by the Rating Agencies, stating that the Replacement Property complies with all applicable environmental laws;
- e. Lender shall have obtained an engineering report, prepared by SI Group, or such other consulting engineer as is approved by the Rating Agencies, stating that the Replacement Property complies with all applicable building laws and does not require performance of deferred maintenance, or if remedial steps are required to effect such compliance or such deferred maintenance, identifying such steps and projecting the cost thereof, which may not exceed \$10,000, and in which case Borrower shall be required to deposit with Lender an amount equal to one hundred fifty percent (150%) of such projected costs, which shall be deemed Impounds to be released substantially in accordance with the provisions contained in Section 3 of Exhibit A to this Note;
- f. Borrower shall have caused to be delivered all leases, title commitments, title insurance policies, surveys, hazard and

liability insurance, evidence of compliance with zoning and other laws, legal

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opinions and other items of due diligence with respect to the Replacement Property as the Rating Agencies may require, all of which shall be in form and substance acceptable to the Rating Agencies;

- g. the Debt Service Coverage Ratio, calculated by substituting the Net Operating Income of the Replacement Property for the Net Operating Income of the Property to be released, combined with the Net Operating Income of the Remaining Properties, as of the time of such release shall be at least equal to the Debt Service Coverage Ratio existing on the Disbursement Date which is 1.55 to 1;
- h. the Person transferring the Replacement Property to Borrower shall be solvent and shall be making such transfer on an arm's length basis and for fair consideration, and Borrower and such Person shall deliver certifications and evidence to such effect and such other certifications as Lender shall reasonably require to assure itself that the substitution does not constitute a fraudulent conveyance on the part of any Person (assuming such Person was not solvent at the time of substitution);
- i. Borrower shall comply with such other terms and conditions as the Rating Agencies shall require in connection with such substitution;
- j. the organizational documents of Borrower shall, if required, be modified to permit the ownership and operation of the Replacement Property;
- k. an opinion of counsel for Borrower in form and substance and delivered by counsel satisfactory to Lender in its sole discretion stating, among other things, that any REMIC Trust formed pursuant to a securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Internal Revenue Code Section 860D, as amended from time to time, or any successor statute, as a result of the release of such Property and the substitution of the Replacement Property;
- l. Borrower shall transfer title to the Property to be released to a Person other than Borrower or any other borrower;
- m. written evidence from the applicable Rating Agencies that the proposed release of such Property and substitution of the Replacement Property will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to such release and substitution for any securities issued in connection with the securitization which are then outstanding;
- n. any third party consents or approvals that are required in order to consummate the contemplated transaction shall have been obtained and Lender shall be provided with satisfactory evidence of same;
- o. delivery to Lender of evidence of title insurance reasonably satisfactory to Lender; and
- p. reimbursement to Lender of any and all costs and expenses paid or incurred by Lender in connection with the request to substitute a Replacement Property, including, without limitation, all in-house or outside counsel attorneys' fees, title insurance fees, appraisal fees, inspection fees, environmental consultants' fees and any fees or charges of the applicable Rating Agencies.

EXHIBIT B TO PROMISSORY NOTE  
LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS

This Exhibit B is attached to and forms a part of that Promissory Note Secured by Mortgages ("Note") executed by MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

1. LOAN DOCUMENTS. The documents numbered 1.1 through 1.13 below of even date herewith (unless otherwise specified) and any amendments, modifications and supplements thereto which have received the prior written approval of Lender and any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Note are collectively referred to as the "Loan Documents".
  - 1.1 This Note;
  - 1.2 Casa del Sol III Deed of Trust, Apollo Village Deed of Trust, Woodland Hills Deed of Trust, Cabana Deed of Trust, Pickwick Village Mortgage, Indian Oaks Mortgage and Windmill Manor Mortgage
  - 1.3 State of Arizona Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.4 State of Colorado Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.5 State of Delaware Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.6 State of Florida Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.7 State of Illinois Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.8 State of Nevada Uniform Commercial Code - Financing Statements - Form UCC-1;
  - 1.9 Limited Liability Company Borrowing Certificate;
  - 1.10 Corporate Resolution Authorizing Limited Liability Company Activity and Certificate of Incumbency;
  - 1.11 Corporate Resolution Authorizing Execution of Guaranty and Endorsement and Hypothecation of Property and Certificate of Incumbency;
  - 1.12 Assignment of Management Contracts and Consent and Subordination of Manager; and
  - 1.13 O&M Plan Letters executed for Casa del Sol III Property, Cabana Property, Apollo Village Property, Pickwick Village Property, Indian Oaks Property, and Woodland Hills Property, respectively.
2. OTHER RELATED DOCUMENTS WHICH ARE NOT LOAN DOCUMENTS.
  - 2.1 Flood Hazard Notice with respect to Pickwick Property;
  - 2.2 Limited Guaranty; and
  - 2.3 Bankruptcy Non-Consolidation Opinion of Borrower's legal counsel.

Recording requested by  
and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC #A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No.: 31-0900553R  
Property Name: Windmill Manor

Prepared by:

Lee M. Smolen  
Sidley Austin Brown & Wood  
10 South Dearborn  
Chicago, Illinois 60603

MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND  
LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING)

July 31, 2001

THIS MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) (the "Mortgage") is made and entered into by and among MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Mortgagor"), having an address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, and WELLS FARGO NATIONAL BANK, NATIONAL ASSOCIATION ("Lender" or "Mortgagee").

THIS MORTGAGE EVIDENCES A MULTI-STATE LOAN WHICH IS SECURED BY REAL PROPERTY LOCATED OUTSIDE THE STATE OF FLORIDA AND REAL PROPERTY LOCATED IN BREVARD, VOLUSIA, AND MANATEE COUNTIES, FLORIDA. FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$61,250.00 AND FLORIDA NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX IN THE AMOUNT OF \$35,000.00 ARE BEING PAID UPON RECORDATION OF ONE OF THE FLORIDA MORTGAGES IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. ATTACHED HERETO AS EXHIBIT B IS A DESCRIPTION OF THE CALCULATION OF LIABILITY FOR DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX.

R E C I T A L S

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Mortgagee, and Mortgagee proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Mortgage, payable to the order of Mortgagee in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Mortgage, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE I. MORTGAGE

1.1 GRANT. For the purposes of and upon the terms and conditions of this Mortgage, Mortgagor irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest to Mortgagee, its successors and assign, with right of entry and possession, all of Mortgagor's right, title and interest, whether now owned or hereafter acquired, in or to all of the following:

(a) That real property ("Land") located in Bradenton, county of Manatee, state of Florida, and more particularly described on Exhibit A attached hereto;

(b) All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, all sewer capacity rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;

(c) All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;

(d) All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;

(e) All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;

(f) All additions and accretions to the property described above;

(g) All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Mortgagor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and

(h) All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE II. OBLIGATIONS SECURED

2.1 OBLIGATIONS SECURED. Mortgagor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

(a) Full and punctual payment to Mortgagee of all sums at any time owing under the Note;

(b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage, including, without limitation, indemnification obligations and advances made to protect the Property;

(c) Payment and performance of all additional covenants and obligations of Borrower and Mortgagor under the Loan Documents;

(d) Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Mortgage recites are secured hereby;

(e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage;

(f) All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 FUTURE ADVANCES. This Mortgage is given to secure not only the Secured Obligations, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee or the holder hereof, or otherwise as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Secured Obligations that may be so secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made under this Mortgage for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements as provided for



herein, plus any increases in the principal balance as the result of negative amortization or deferred interest, if any. It is agreed that any additional sum or sums advanced by Mortgagee pursuant to the terms hereof shall be equally secured with and have the same priority as the original Secured Obligations and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes or other guaranties of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional promissory note or guaranty or promissory notes or guaranties executed and delivered pursuant to this paragraph shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this paragraph.

2.3 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.4 MATURITY DATE. The maturity date of the Note is September 1, 2011.

2.5 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

#### ARTICLE III. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Mortgagor irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Mortgagee confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect

and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. Upon Mortgagor's cure of the Default, Mortgagee shall re-confer upon Mortgagor a revocable license to collect and retain the Payments as they become due and payable, until the occurrence of a Default. All Payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Mortgagee, to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation or any other obligation of Borrower, Mortgagor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (e) the exercise of or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (f) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

#### 3.4 COVENANTS.

(a) ALL LEASES. Mortgagor shall, at Mortgagor's sole cost and expense:

(i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;

(ii) use reasonable efforts to keep the Property leased at all times to tenants whom Mortgagor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);

(iii) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease and all amendments thereto and waivers thereof; and

(iv) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and specific subordinations of any Lease to this Mortgage, in form and substance satisfactory to Mortgagee.

Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;

(vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;

(vii) except upon Mortgagee's request, execute any assignment of landlord's interest in any Lease; or

(viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Mortgagor shall deposit with Mortgagee any sums received by Mortgagor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Mortgagor with respect to any Lease which is less than \$50,000 shall be payable to Mortgagor. All such sums received by Mortgagee with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12) and shall be deposited by Mortgagee into a pledged account in accordance with Section 6.12. If no Default exists, Mortgagee shall release such Impounds to Mortgagor from time to time as necessary to pay or reimburse Mortgagor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Mortgagee shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Mortgagor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Mortgagor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Mortgagee may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Mortgagee shall release any remaining such Impounds relating to the affected space to Mortgagor. Mortgagor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

(b) MAJOR LEASES. Mortgagor shall, at Mortgagor's sole cost and expense, give Mortgagee prompt written notice of any material default by landlord or tenant under any

Major Lease (as defined below). Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;

(ii) materially reduce any rent or other sums due from the tenant under any Major Lease;

(iii) terminate or materially modify or amend any Major Lease; or

(iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Mortgagee; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Mortgagee. Mortgagor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4(a) as well as by the provisions of this Section.

(c) FAILURE TO DENY REQUEST Mortgagee's failure to deny any written request by Mortgagor for Mortgagee's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Mortgagee's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Mortgagee's consent to such request.

3.5 RIGHT OF SUBORDINATION. Mortgagee may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Mortgage to any Lease.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Mortgagor grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of Mortgagor's right, title and interest in and to the following described personal property in which Mortgagor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Mortgagor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under the Florida Uniform Commercial Code (the "UCC"), this Mortgage constitutes a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended and recodified from time to time, this Mortgage shall constitute a fixture filing recorded in the real estate records. Notwithstanding the foregoing, nothing herein shall be deemed to create any lien or interest in favor of Mortgagee under this Mortgage in any such Collateral which is not a fixture, and the purpose of this Article IV is to create a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended or recodified from time to time.

4.2 COVENANTS. Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Mortgagee at least 30 days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder.

4.3 RIGHTS OF MORTGAGEE. In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and

preserve the Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF MORTGAGEE UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

(a) DISPOSITION OF COLLATERAL. Mortgagee may: (i) upon written notice, require Mortgagor to assemble the Collateral and make it available to Mortgagee at a place reasonably designated by Mortgagee; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and

(b) OTHER RIGHTS. Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of the Collateral.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Mortgagee may from time to time elect.

4.5 POWER OF ATTORNEY. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral, and upon a Default, take

any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

#### ARTICLE V. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Mortgagor represents and warrants to Mortgagee that, to Mortgagor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

(a) LEGAL STATUS. Mortgagor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Mortgagor and Borrower are organized. Mortgagor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.

(b) PERMITS. Mortgagor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged in compliance with applicable law.

(c) AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Mortgagor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.

(d) VIOLATIONS. The execution, delivery and performance by Mortgagor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Mortgagor or Borrower is a party or by which Mortgagor or Borrower is bound.

(e) LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Mortgagor or Borrower other than those previously disclosed in writing by Mortgagor or Borrower to Mortgagee.

(f) FINANCIAL STATEMENTS. The financial statements of Mortgagor and Borrower, of each general partner (if Mortgagor or Borrower is a partnership), of each member (if Mortgagor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Mortgagor or Borrower to Mortgagee: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan, or other accounting standards approved by Mortgagee. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged,

pledged or encumbered except as previously disclosed in writing by Mortgagor or Borrower to Mortgagee and approved in writing by Mortgagee.

(g) REPORTS. All reports, documents, instruments and information delivered to Mortgagee in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Mortgagee accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.

(h) INCOME TAXES. There are no material pending assessments or adjustments of Mortgagor's or Borrower's income tax payable with respect to any year.

(i) SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.

(j) TITLE. Mortgagor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, previously disclosed to Mortgagee by Mortgagor in a writing specifically referring to this representation and warranty.

(k) MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Mortgage, other than those (if any) previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage.

(l) ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Mortgagee, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.

(m) LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.

(n) COLLATERAL. Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Mortgagee by Mortgagor in writing specifically referring to this representation and warranty. Mortgagor's chief



executive office (or principal residence, if applicable) is located at the address shown on page one of this Mortgage. Mortgagor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Mortgagor delivered to Mortgagee are complete and accurate in every respect. Mortgagor's legal name is exactly as shown on page one of this Mortgage.

(o) CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Mortgagee, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

(p) HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Mortgagee, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Mortgagor to Mortgagee.

(q) HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.

(r) HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).

(s) WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(t) COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Mortgagor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.

(u) PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

(v) CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.

(w) HOMESTEAD. There is no homestead or other exemption available to Mortgagor which would materially interfere with the right to sell the Property or the right to foreclose this Mortgage.

(x) SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors

of Mortgagor, and Mortgagor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Mortgagor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Mortgagor is able to pay its debts as they become due.

(y) SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Mortgagor hereby represents, warrants and covenants to Mortgagee that with respect to both Mortgagor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Mortgagor:

(a) each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(b) each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(c) each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;

(d) each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;

(e) if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;

(f) if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;

(g) each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(h) each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured

trade debt not to exceed \$1,000,000 in the aggregate with respect to Mortgagor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Mortgagor, as applicable) and is paid within thirty (30) days from the date incurred;

(i) each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(j) each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;

(k) each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;

(l) each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;

(m) each such entity has conducted and will conduct its business in its own name or in a registered trade name;

(n) each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;

(o) each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;

(p) each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;

(q) each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;

(r) each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;

(s) each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;

(t) each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;

(u) each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;

(v) each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;

(w) each such entity has not made and will not make loans to any person or entity;

(x) each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;

(y) each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;

(z) if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;

(aa) each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(bb) each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;

(cc) if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;

(dd) if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;

(ee) each such entity will, as a condition to the closing of the Loan, deliver to Mortgagee a nonconsolidation opinion in form and substance acceptable to Mortgagee;

(ff) if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and

(gg) if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years

immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

5.3 COMMERCIAL LOAN. Borrower warrants that the loan evidenced by this Note is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

#### ARTICLE VI. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Mortgagor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Mortgagee elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Mortgagee is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Mortgagee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Mortgagor shall not, without Mortgagee's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the

Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit physical waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Mortgage, Mortgagor agrees as follows:

(a) PROHIBITED ACTIVITIES. Mortgagor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Mortgagor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

(b) HAZARDOUS MATERIALS LAWS. Mortgagor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) NOTICES. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Mortgagor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials

Claims") pending or threatened in writing against Mortgagor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated by or with Hazardous Materials.

(d) REMEDIAL ACTION. In response to knowledge of or notification to Mortgagor of the presence of any Hazardous Materials on, under or about the Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required of Mortgagor by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(e) INSPECTION BY MORTGAGEE. Upon reasonable prior notice to Mortgagor (except in the event of an emergency) and during normal business hours, Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.

(f) LEGAL EFFECT OF SECTION. Mortgagor and Mortgagee agree that: (i) this Hazardous Materials Section is intended as Mortgagee's written request for information (and Mortgagor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5, or any other applicable law; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Mortgagee and Mortgagor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736, or any other applicable law.

6.3 COMPLIANCE WITH LAWS. Mortgagor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Mortgagor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged.

6.4 LITIGATION. Mortgagor shall promptly notify Mortgagee in writing of any litigation pending or threatened in writing against Mortgagor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened (in writing) litigation against Mortgagor or Borrower if the aggregate damage claims against Mortgagor or Borrower exceed \$500,000.

6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Mortgagor shall not:  
(a) merge or consolidate with any other entity or permit Borrower to merge or

consolidate with any other entity; (b) make any substantial change in the nature of Mortgagor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Mortgagor's assets except in the ordinary course of Mortgagor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.

6.6 ACCOUNTING RECORDS. Mortgagor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan or other accounting standards approved by Mortgagee. Mortgagor shall permit and shall cause Borrower to permit any representative of Mortgagee, at any reasonable time and from time to time, upon reasonable prior notice to Mortgagor, to inspect, audit and examine such books and records and make copies of same.

6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor shall pay to Mortgagee the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Mortgagee's in-house or outside counsel, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property or Collateral required by Mortgagee as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Mortgagor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Mortgagee may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Mortgagor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Mortgagor's right to contest such matters under this Mortgage or as expressly permitted in the Loan Documents, Mortgagor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the



event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

6.9 TAXES AND OTHER LIABILITIES. Mortgagor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Mortgagor shall promptly provide to Mortgagee copies of all tax and assessment notices pertaining to the Property. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Mortgagor shall insure the Property against loss or damage by fire and such other hazards as Mortgagee shall from time to time require; provided, however, (a) Mortgagee, at Mortgagee's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and (b) Mortgagee, at Mortgagee's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Mortgagor shall also carry public liability insurance and such other insurance as Mortgagee may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Mortgagee and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Mortgagor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Mortgagor to Mortgagee under any of the Loan Documents remain outstanding at Mortgagor's expense, with companies, and in substance and form satisfactory to Mortgagee. Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance shall not incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurance; (d) the solvency of any insurer; or (e) the payment of claims.

#### 6.11 INSURANCE AND CONDEMNATION PROCEEDS.

(a) ASSIGNMENT OF CLAIMS. Mortgagor absolutely and irrevocably assigns to Mortgagee all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Mortgagor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Mortgagee, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Mortgagee. Mortgagee may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Mortgagor may settle as provided herein), but shall not be responsible

for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Mortgagee.

(b) APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Mortgagor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Mortgagee of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) delivery to Mortgagee in form and content acceptable to Mortgagee of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Mortgagee; (cc) a cost breakdown for the work; (dd) if reasonably required by Mortgagee, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Mortgagee; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security. Mortgagor acknowledges that the specific conditions described above are reasonable.

(c) APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds or if a Default occurs at any time thereafter, Mortgagee may, at Mortgagee's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

#### 6.12 IMPOUNDS.

(a) POST-DEFAULT IMPOUNDS. If required by Mortgagee at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Mortgagor shall deposit with Mortgagee such amounts ("Post-Default Impounds") on such dates (determined by Mortgagee as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Mortgagee. Mortgagee in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Mortgagee not exceeding 1 year and shall determine the fractional portion thereof that Mortgagor shall deposit with Mortgagee

on each date specified by Mortgagee during such period. If the Post-Default Impounds paid by Mortgagor are not sufficient to pay the related Costs, Mortgagor shall deposit with Mortgagee upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Mortgagor in addition to (but without duplication of) any other Impounds (as defined below).

(b) ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Mortgagee or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Mortgagee shall not be a trustee, special depository or other fiduciary for Mortgagor with respect to such account, and the existence of such account shall not limit Mortgagee's rights under this Mortgage, any other agreement or any provision of law. If no Default exists, Mortgagee shall apply all Impounds to the payment of the related Costs, or in Mortgagee's sole discretion may release any or all Impounds to Mortgagor for application to and payment of such Costs. If a Default exists, Mortgagee may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Mortgagor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Mortgagor hereunder shall not be diminished by deposits of Impounds made by Mortgagor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Mortgage, Mortgagee may assign all Impounds in its possession to Mortgagee's assignee, whereupon Mortgagee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Mortgagee may elect, Mortgagee shall pay to Mortgagor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Mortgagor under Section 6.9, (ii) all insurance premiums payable by Mortgagor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Mortgagor shall deliver to Mortgagee, promptly upon receipt, all bills for Costs for which Mortgagee has required Post-Default Impounds.

6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14 RIGHT OF INSPECTION. Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Mortgagor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage. Mortgagee shall use reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property.

6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN MORTGAGOR.

Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Mortgagee or as otherwise expressly permitted in the Note, Mortgagor shall not cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business), or cause or permit a Transfer of any direct or indirect interest (whether general partnership interest, stock, non-managing member limited liability company interest, trust, or otherwise) in Mortgagor or Borrower. In the event of any Transfer that is not expressly permitted in the Note and is without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Mortgagor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Mortgagee's consent to any Transfer may be withheld, conditioned or delayed in Mortgagee's sole and absolute discretion.

6.16 INTENTIONALLY OMITTED.

6.17 INTENTIONALLY OMITTED.

6.18 EXCULPATION. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after a Default or from any other act or omission of Mortgagee in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Mortgagee and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Mortgage, Mortgagor agrees to defend, indemnify and hold harmless the Mortgagee Group (as hereinafter defined) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Mortgagee Group; (b) this Mortgage; (c) the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (d) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan Documents; (e) any alleged obligation or undertaking on the Mortgagee Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Mortgagor under Section 6.2 above. The foregoing to the contrary notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Mortgagee Group, or any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Mortgage on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss,

damage, cost, expense or liability incurred by the Mortgagee Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Mortgage, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Mortgagee Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Mortgagee Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Mortgagee Group", as used herein, shall mean (1) Mortgagee (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Mortgagee, (3) the directors, officers, employees and agents of Mortgagee and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Mortgagor shall pay immediately upon Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Mortgagor agrees to use legal counsel reasonably acceptable to the Mortgagee Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE SATISFACTION AND RELEASE OF THIS MORTGAGE, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20 INTENTIONALLY OMITTED.

6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.

Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.

6.22 SALE OR PARTICIPATION OF LOAN. Mortgagor agrees that Mortgagee may at any time sell, assign, participate or securitize all or any portion of Mortgagee's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Mortgagee with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Mortgagor, any partner or member of Mortgagor, any constituent partner or member of Mortgagor, any guarantor and any nonborrower mortgagor). In the event of any such sale, assignment, participation or securitization, Mortgagee and the other parties to the same shall share in the rights and obligations of Mortgagee set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Mortgagor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Mortgagor to each purchaser, assignee or participant, and Mortgagor shall, within 15 days after request by Mortgagee, (x) deliver an estoppel certificate verifying for the benefit of Mortgagee and any other party designated by Mortgagee the status and the terms and provisions of the Loan in form and substance acceptable to Mortgagee, (y) provide any information, legal opinions or documents regarding Mortgagor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Mortgagee or Mortgagee's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Mortgagor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Mortgagor's rights or increasing Mortgagor's obligations. The indemnity obligations of Mortgagor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23 RELEASE. Upon payment in full of the Secured Obligations, and satisfaction of all of the covenants, warranties, undertakings and agreements made in this Mortgage and in the other Loan Documents (including, without limitation, repayment in full of all principal, interest and other amounts owing under the Note) are kept and performed, and all obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, Mortgagee shall release, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any release executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the release may describe the grantee as "the person or persons legally entitled thereto". Mortgagee shall have no duty to determine the rights of persons claiming to be rightful grantees of any release. When the Property has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

6.24 SUBROGATION. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

6.25 MANAGEMENT AGREEMENTS. Without the prior written consent of Mortgagee, Mortgagor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Mortgagor represents,

warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Mortgagor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Mortgagor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Mortgagee or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Mortgagee shall have the right to terminate, or to direct Mortgagor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee.

#### ARTICLE VII. DEFAULT

7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).

(a) OPTIONAL DEFAULT. An "Optional Default" shall occur, at Mortgagee's option, upon the occurrence of any of the following events:

(i) MONETARY. Borrower or Mortgagor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.

(ii) FAILURE TO PERFORM. Borrower or Mortgagor shall fail to observe, perform or discharge any of Borrower's or Mortgagor's obligations, covenants, conditions or agreements, other than Borrower's or Mortgagor's payment obligations, under the Note, this Mortgage or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Mortgagor, as the case may be, by Mortgagee or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Mortgagor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.

(iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Mortgagor, or a guarantor, if any, to Mortgagee or in connection with any of the Loan Documents, or as an inducement to Mortgagee to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

(iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Mortgagee) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Mortgagor under any of the Loan Documents, or any material portion of the other assets of Borrower or Mortgagor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

(v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Mortgagee) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Mortgagor promptly notifies Mortgagee of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Mortgagor delivers to Mortgagee immediately available funds in an amount sufficient, in Mortgagee's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of such funds and no Default occurs thereafter, Mortgagee shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Mortgage have been satisfied. Mortgagor acknowledges that the specific conditions described above are reasonable.

(vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Mortgagee and relied upon by Mortgagee in making the Loan, and which change Mortgagee reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Mortgagor to pay or perform Borrower's or Mortgagor's obligations in accordance with the terms of the Note, this Mortgage, and the other Loan Documents.

(b) AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

(i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.

(ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Mortgagee regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Mortgagor, any general partner or managing member of Borrower or Mortgagor,



or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Mortgagee may, at its option, declare all sums owing to Mortgagee under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Mortgagee under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Mortgagee shall have all of the following rights and remedies:

(a) ENTRY ON PROPERTY. With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Mortgagee deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Mortgagor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Mortgagee deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Mortgagee's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority hereto, the judgment of Mortgagee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Mortgagee's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Mortgagee as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Mortgagee's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;

(b) APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Mortgagee's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Mortgagor, Borrower or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents;

(c) INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

(d) FORECLOSURE. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee.

(i) In the event foreclosure proceedings are filed by Mortgagee, all expenses incident to such proceeding, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property or any part thereof.

(ii) Mortgagee may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Mortgage on the remaining portion of the Property foreclosed.

Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and

agrees that: (viii) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (xi) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property;

(e) MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;

(f) RIGHTS TO COLLATERAL. To exercise all rights Mortgagee may have with respect to the Collateral under this Mortgage, the UCC or otherwise at law; and

(g) OTHER RIGHTS. To exercise such other rights as Mortgagee may have at law or in equity or pursuant to the terms and conditions of this Mortgage or any of the other Loan Documents.

In connection with any sale or sales hereunder, Mortgagee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. To the fullest extent permitted by law, proceeds of any sale under this Mortgage shall be applied to the extent funds are so available to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', managers', and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Mortgagee under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

7.5 WAIVER OF MARSHALING RIGHTS. Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations.

7.6 NO CURE OR WAIVER. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Mortgagor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor agrees to pay to Mortgagee immediately and upon demand all costs and expenses incurred by Mortgagee in the enforcement of the terms and conditions of this Mortgage (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.

7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Mortgagor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (b) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

7.9 REMEDIES CUMULATIVE. All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently.

#### ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF MORTGAGOR UNDER THIS

MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Mortgagee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Mortgagee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Mortgagee in exercising any such right or remedy shall be construed to preclude Mortgagee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Mortgagor shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Mortgagee's consent, approval, acceptance or satisfaction is required under any provision of this Mortgage or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Mortgagee unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Mortgage or any of the other Loan Documents, such costs or expenses shall be reasonable.

8.4 PERMITTED CONTESTS. After prior written notice to Mortgagee, Mortgagor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Mortgagor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Mortgagor pursues the contest diligently, in a manner which Mortgagee determines is not prejudicial to Mortgagee, and does not impair the lien of this Mortgage; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Mortgagee shall not be in any danger of any civil or criminal liability; and (d) if required by Mortgagee, Mortgagor deposits with Mortgagee any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Mortgagee to protect Mortgagee from the consequences of the contest being unsuccessful. Mortgagor's right to contest pursuant to the terms of this provision shall in no way relieve Mortgagor or Borrower of its obligations under the Loan or to make payments to Mortgagee as and when due.

8.5 FURTHER ASSURANCES. Mortgagor shall, upon demand by Mortgagee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the provisions hereof.

8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under this Mortgage or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 MORTGAGOR AND MORTGAGEE DEFINED. The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Property, and the term "Mortgagee" includes the original Mortgagee and any future owner or holder, including assignees, pledgees and participants, of the Note or any interest therein.

#### 8.8 DISCLAIMERS.

(a) RELATIONSHIP. The relationship of Mortgagor and Mortgagee under this Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Mortgagee neither undertakes nor assumes any responsibility or duty to Mortgagor or to any third party with respect to the Property. Notwithstanding any other provisions of this Mortgage and the other Loan Documents: (i) Mortgagee is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Mortgagor, and Mortgagee does not intend to ever assume such status; (ii) Mortgagee's activities in connection with this Mortgage and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Mortgagee does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Mortgagor.

(b) NO LIABILITY. Mortgagee shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Mortgagor or any of Mortgagor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Mortgagor or any of Mortgagor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

8.9 SEVERABILITY. If any term of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to

which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Mortgagee under the Mortgage established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the Mortgage with any security interest created by the security agreement. Mortgagee may elect to exercise or enforce any of its rights, remedies or interests under either or both the Mortgage or the security agreement as Mortgagee may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the Mortgage and the security agreement.

8.11 MERGER. No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.

8.12 OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL. If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.

8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Mortgage as a Mortgagor agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon any separate property or community property of that person.

8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.

8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.

8.17 GOVERNING LAW. This Mortgage was accepted by Mortgagee in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and

performance, this Mortgage, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 and security interests created pursuant thereto and pursuant to the other Loan Documents shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Mortgage, the Note and other Loan Documents.

8.18 CONSENT TO JURISDICTION. Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Mortgagee against Mortgagee, arising out of or relating to this Mortgage, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Mortgagor's principal place of business is located over any suit, action or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to this Mortgage, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Mortgagee to foreclose this Mortgage or any action brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.19 EXHIBITS. Exhibit A is incorporated into this Mortgage by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All requests, demands, notices and other communications that are required or permitted to be given to a party under this Mortgage shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Mortgage and the facsimile numbers for the parties are as follows:

Mortgagee: WELLS FARGO BANK, N.A.  
FAX NO.: (925) 691-5947

Mortgagor: MHC STAGECOACH, L.L.C.  
FAX NO.: (312) 279-1715

Mortgagor's principal place of business is at the address set forth on page 1 of this Mortgage. A copy of any notice to Mortgagor shall be sent as follows:



Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Mortgagor whose address is set forth on page 1 of this Mortgage hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Mortgagor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. MORTGAGEE (BY ITS ACCEPTANCE HEREOF) AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the day and year first above written.

WITNESS/ATTEST:

MORTGAGOR:

MHC STAGECOACH, L.L.C., a Delaware limited liability company

/s/ Lawrence M. Gritton  
-----  
Print Name: Lawrence M. Gritton

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

/s/ Benjamin Randall  
-----  
Print Name: Benjamin Randall

By: /s/ John M. Zoeller  
-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK                )

On 8/1, 2001 before me, M. Dobronski, Notary Public,  
personally appeared John M. Zoeller, as Vice President, Chief Financial Officer  
and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing  
member of MHC STAGECOACH, L.L.C., a Delaware limited liability company,  
personally known to me to be the person whose name is subscribed in the within  
instrument and acknowledged to me that he executed the same in his authorized  
capacity, and that by his signature on the instrument, the person or the entity  
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Mary Dobronski  
-----  
Print Name: Mary Dobronski

My Commission Expires:

11/3/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any:

EXHIBIT A

EXHIBIT A  
DESCRIPTION OF LAND

Exhibit A to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Land referred to in this Mortgage is situated in the county of Manatee, state of Florida and is described as follows:

PARCEL A:

Begin at the Northwest corner of the Southeast 1/4 of the Northeast 1/4 of Section 16, Township 35 South, Range 18 East, Manatee County, Florida; thence South 00(Degree)14'17" East, 1327.25 feet to the Southwest corner of the Southeast 1/4 of the Northeast 1/4 of the aforementioned Section 16; thence North 89(Degree)58'09" East, 1322.53 feet to the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of Section 16; thence South 00(Degree)24'10" East, 137.28 Feet; thence North 89(Degree)40'44" East, 1269.21 feet; thence North 00(Degree)15'02" West, 137.28 feet; thence North 89(Degree)40'56" East, 42.00 feet along the South line of the Southwest 1/4 of the Northwest 1/4 of Section 15, Township 35 South, Range 18 East, Manatee County, Florida to a point, said point being the Southwest corner of the Easterly 8.00 feet of the Southwest 1/4 of the Northwest 1/4 of Section 15; thence North 00(Degree) 15'02" West along the West line of said Easterly 8.00 feet, 529.06 feet; thence North 89(Degree)54'48" West, 352.77 feet; thence North 83(Degree)03'14" West, 41.33 feet; thence North 89(Degree)58'10" West, 384.29 feet; thence North 64(Degree)05'35" West, 45.06 feet; thence North 89(Degree)49'37" West, 69.63 feet; thence North 00(Degree)27'02" West, 39.77 feet; thence South 89(Degree)57'27" West, 229.20 feet; thence South 00(Degree)34'37" West, 52.86 feet; thence South 89(Degree)50'04" West, 69.88 feet; thence North 68(Degree)46'00" West, 42.84 feet; thence North 89(Degree)02'58" West, 70.09 feet; thence North 00(Degree)46'23" West, 36.15 feet; thence South 89(Degree)58'50" West, 204.28 feet; thence South 01(Degree)06'03" West, 34.82 feet; thence North 89(Degree)55'45" West, 69.61 feet; thence North 61(Degree)14'43" West, 46.29 feet; thence North 89(Degree)47'56" West, 49.68 feet; thence North 01(Degree)06'00" West, 14.20 feet; thence South 89(Degree)37'41" West, 244.94 feet; thence North 14(Degree)02'42" West, 20.66 feet; thence North 00(Degree)04'49" East, 50.12 feet; thence North 07(Degree)13'20" West, 40.26 feet; thence North 00(Degree)29'42" West, 229.78 feet; thence North 89(Degree)19'18" East, 21.87 feet; thence North 00(Degree)01'05" East, 69.28 feet; thence North 16(Degree)42'43" West, 41.53 feet; thence North 00(Degree)18'37" East, 70.77 feet; thence North 90(Degree)00'00" West, 443.35 feet; thence North 02(Degree)07'48" West, 80.67 feet; thence North 25(Degree)58'34" East, 33.85 feet; thence North 00(Degree)07'24" East, 93.96 feet; thence South 89(Degree)59'49" West, 295.60 feet to the Point of Beginning.

PARCEL B:

Non-exclusive rights-of-way and easements as contained in Agreements recorded January 13, 1939, in Deed Book 159, page 331, and re-recorded February 16, 1939, in Deed Book 160, page

EXHIBIT A

23; recorded October 30, 1939, in Deed Book 164, page 340, and recorded May 31, 1974, in Official Records Book 673, page 646, all of the Public Records of Manatee County, Florida.

EXHIBIT A

## EXHIBIT B

## CALCULATION OF DOCUMENTARY STAMP AND INTANGIBLE PERSONAL PROPERTY TAX

Exhibit B to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

This Mortgage is part of an out-of-state loan transaction which only partially secures the loan. This Mortgage encumbers the property described on Exhibit A, and separate mortgages are being executed and delivered by Mortgagor encumbering certain other property located in Florida and in other states (such other property being further described on Exhibit C and being referred to as the "Other Property"). The Florida collateral is located in Brevard, Volusia and Manatee Counties, and three (3) separate mortgages (the Florida Mortgages") encumbering three (3) properties are being executed and delivered by Mortgagor for simultaneous recording in the various Florida counties described above. The total indebtedness secured by this Mortgage equals \$50,000,000.00, as evidenced by one (1) promissory note in the aggregate original principal amount of \$50,000,000.00 (the "Note"). The Note was made, executed and delivered outside the State of Florida. The value of the Florida property encumbered by the Florida Mortgages equals \$27,200,000.00. The aggregate value of all other property securing the loan and located outside the State of Florida equals \$50,400,000.00. Thus, the total aggregate value of all property securing the loan equals \$77,600,000.00. The property encumbered by the Florida Mortgages and located in Florida represents thirty-five (35%) percent [ $\$27,200,000.00 / \$77,600,000.00$ ] of the total value of all property securing the loan. In accordance with Florida Statutes, Section 201.08, and Florida Administrative Code, Rule 12B-4.053(32)(b), documentary stamp tax is computed based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all mortgaged property (which, in this case, equals \$17,500,000.00). Accordingly, documentary stamp tax in the amount of \$61,250.00 is due upon the recording of the Florida Mortgages in the Florida counties listed above. Pursuant to Chapter 199, Florida Statutes, non-recurring intangible personal property tax is computed and payable based upon that portion of the indebtedness which bears the same relation as the value of the mortgaged property located in Florida bears to the total value of all mortgaged property, which, in this case, equals [ $\$50,000,000.00 \times (\$27,200,000.00 / \$77,600,000.00)$ ]. Thus, non-recurring intangible personal property tax in the amount of \$35,000.00 is due and payable upon recording of the Florida Mortgages in the Florida counties listed above.

EXHIBIT B

EXHIBIT C  
DESCRIPTION OF OTHER PROPERTY

Exhibit C to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Other Property referred to in this Mortgage is described as follows:

CABANA PROPERTY

The Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada.

EXCEPTING THEREFROM the described premises:

The North Forty feet (40.00') and the East Forty feet (40.00') of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada; together with the certain spandrel area in the Northeast Quarter corner thereof, also being the Southwest corner of the intersection of East Twain Avenue and Cabana Drive, bounded as follows: on the North by the South line of the North Forty feet (40.00'); on the East by the West line of the East Forty feet (40.00'), and on the Southwest by the arc of a curve concave Southwesterly, having a radius of Twenty five feet (25.00') that is tangent to the South line of said North Forty feet (40.00') is tangent to the South line of said North Forty feet (40.00') and tangent to the West line of said Forty feet (40.00').

ALSO BEING described as that portion of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Northeast Quarter (NE 1/4) of the Southwest Quarter of said Section 16; thence South 01(Degree) 55' 58" East a distance of 40.01 feet to a point on the Southerly right of way line of Twain Avenue (80.00 feet wide) said point being the TRUE POINT OF BEGINNING; thence North 89o 09' 31" East, along said Southerly right of way of Twain Avenue a distance of 1259.02 feet to a point of tangent curve concave to the Southwest having a radius of 25.00 feet; thence Southeasterly along the arc of said curve through a central angle of 89(Degree) 28' 02" an arc length of 39.04 feet to a point on the Westerly right of way line of Cabana Drive (80.00 feet wide); thence South 01o 22' 27" East along said Westerly right of way line of Cabana Drive a distance of 1238.26 feet; thence South 88(Degree) 17' 57" West a distance of 1271.25 feet; thence North 01(Degree) 55' 58" West a distance of 1282.27 feet to the TRUE POINT OF BEGINNING.

EXHIBIT C

WOODLAND HILLS PROPERTY

Northwest 1/4 of the Southeast 1/4 and the North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West of the 6th P.M., County of Adams, State of Colorado,

EXCEPT portions dedicated for County roads;

AND EXCEPT that part described as follows:

Beginning at the center of Section 21, Township 2 South, Range 68 West of the 6th P.M., thence South 89 degrees 53 minutes East along the North line of the Southeast 1/4, Section 21, a distance of 40.00 feet; thence South parallel to the West line of the Southeast 1/4 of said Section, 30.00 feet to the True Point of Beginning; thence South 89 degrees 53 minutes East parallel to the North line of the Southeast 1/4 a distance of 180.00 feet; thence South parallel to the West line of the Southeast 1/4, 150.00 feet; thence North 89 degrees 53 minutes West parallel to the North line of the Southeast 1/4, 180.00 feet; thence North parallel to the West line of the Southeast 1/4, 150.00 feet to the True Point of Beginning, being in the City of Thornton, County of Adams, State of Colorado;

AND EXCEPT that part described as follows:

A part of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West, of the 6th P.M., County of Adams, State of Colorado, described as follows:  
Beginning at a point 220.00 feet East and 180.00 feet South of the Northwest corner of said Southeast 1/4; thence Southerly and parallel to the West line of said Southeast 1/4 a distance of 393.93 feet; thence on an angle to the right of 90 degrees a distance of 180.00 feet to a point 40 feet East of the West line of said Southeast 1/4; thence on an angle to the right of 90 degrees and parallel to said West line a distance of 394.76 feet to a point 180.00 feet South of the North line of said Southeast 1/4; thence on an angle to the right 90 degrees 16 minutes 40 seconds and parallel to said North line a distance of 180.00 feet to the Point of Beginning, County of Adams, State of Colorado.

EXHIBIT C



INDIAN OAKS PROPERTY

PARCEL A:

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 21, and run North 89(Degree) 50' 50" East, along the North line of said Section 21, a distance of 330.04 feet to the Point of Beginning; thence continue North 89(Degree) 50' 50" East, along said North line, a distance of 816.83 feet; thence South 05(Degree) 47' 10" West, a distance of 2488.78 feet; thence North 89(Degree) 53' 00" West, a distance of 419.86 feet; thence South 01(Degree) 04' 00" East, a distance of 150.00 feet, to a point on the North Right of Way line of Barnes Boulevard (a 100 foot Right of Way); thence North 89(Degree) 53' 00" West, along said North Right of Way line, a distance of 100.02 feet; thence North 01(Degree) 04' 00" West, parallel to the West line of said Northwest 1/4, a distance of 2623.29 feet, to the Point of Beginning.

PARCEL B:

A perpetual non-exclusive easement for the benefit of Parcel A for surface water runoff from "Pod #2" through a weir on said land eastward to an existing drainage ditch as set forth in Grant of Easement from George M. Green, Jr. and Sandie J. Green in favor of The Indian Oaks Corporation, dated July 27, 1987, recorded August 4, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2826, page 2681; and modified by Stipulated Settlement in Civil Action No. 87-9785-CA-C, The Indian Oaks Corporation, a Florida corporation, Plaintiffs, vs. George M. Green, Jr. and Sandie J. Green, his wife, Defendants, dated July 27, 1987, recorded August 20, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2831, page 2211, more particularly described as follows:

Beginning at the approximate Southwest corner of land to the East as described in Deed recorded in Official Records Book 2471, page 2094, Public Records of Brevard County, Florida, said point being on the public drainage ditch on the north side of Barnes Boulevard; thence north along an existing approximately twenty (20) foot wide drainage ditch on the westerly boundary of the land described in said Deed for an approximate distance of 844.00 feet to an outlet pipe which extends easterly into said drainage ditch from a Type "C" inlet weir located on "Pod #2" of Parcel A.

EXHIBIT C

PICKWICK VILLAGE PROPERTY

PARCEL A:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East, also a portion of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida being more particularly described as follows:

As a point of reference begin at the Southwest corner of Section 6, Township 16 South, Range 33 East, thence along the South line of Section 6 South 89 degrees 35 minutes 25 seconds East a distance of 3300.00 feet to the Point of Beginning; thence North 00 degrees 24 minutes 35 seconds East a distance of 330.00 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 200.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 612.36 feet to a point on the Southerly right-of-way line of Clyde Morris Blvd. (a 100.00 foot right-of-way as now laid out and used); thence South 41 degrees 06 minutes 50 seconds East along the Southerly right-of-way line of said Clyde Morris Blvd. a distance of 1067.45 feet to a point on the East line of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East; thence South 00 degrees 24 minutes 35 seconds West along the said East line of the West one-half of the Northeast one-quarter of said Section 7 a distance of 2370.82 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 1320.00 feet to a point in the West line of the West one-half of the Northeast one-quarter of Section 7; thence North 00 degrees 24 minutes 35 seconds East along the West line of the West one-half of the Northeast one-quarter of Section 7 a distance of 1650.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 990.00 feet to the Point of Beginning of this description.

PARCEL B:

A portion of the Northwest one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows: As a point of reference, commence at a concrete monument marking the Northwest corner of Willow Run Subdivision, Unit 2, as per map recorded September 17, 1979, in Map Book 36, Pages 16 and 17 of the Public Records of Volusia County, Florida; thence run North 00 degrees 41 minutes 47 seconds West along a Northerly extension of the Westerly line of said Willow Run Subdivision, Unit 2, a distance of 230.08 feet to a point in the North line of 230.00 foot Florida Power and Light Company right-of-way as described in instrument recorded October 5, 1973, in Official Records Book 1664, Pages 448-450, of the Public Records of Volusia County, Florida, said point also being in the Southerly line of Pickwick Village Mobile Home Park, an unrecorded subdivision; thence run South 89 degrees 35 minutes 24 seconds West along the North line of said Florida Power and Light Company right-of-way, being also the Southerly line of Pickwick Village, a distance of 1.13 feet to a concrete monument marking the Southwest corner of said Pickwick Village; thence North 00 degrees 24 minutes 10 seconds West, a distance of 400.00 feet to the Point of Beginning; thence North 89 degrees 45 minutes 45 seconds West, a distance of 440.02 feet to the center line of an 80.00 foot drainage ditch easement as described in instrument

EXHIBIT C

recorded June 28, 1966, in Official Records Book 847, Pages 429 through 444, of the Public Records of Volusia County, Florida; thence North 00 degrees 24 minutes 10 seconds West along the center line of said drainage ditch easement, a distance of 1250.34 feet; thence South 89 degrees 45 minutes 45 seconds East, a distance of 440.02 feet to a point on the Westerly line of said Pickwick Village Subdivision; thence South 00 degrees 24 minutes 10 seconds East along said Westerly line, a distance of 1250.34 feet to the Point of Beginning.

SAID PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East; also a portion of the West one-half of the Northeast one-quarter and a portion of the Northwest one-quarter, all lying in Section 7, Township 16 South, Range 33 East in Volusia County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Section 6, Township 16 South, Range 33 East and run South 89(Degree) 35' 25" East along the South line of the Southwest one-quarter a distance of 2635.46 feet to the Southwest corner of the Southeast one-quarter of said Section 6; thence North 01(Degree) 17' 05" East along the West line of the Southeast one-quarter of said Section 6 a distance of 328.72 feet to an iron pipe labeled LS 2048 and the Point of Beginning of this description; from said Point of Beginning, continue North 01(Degree) 17' 05" East along the West line of the Southeast one-quarter a distance of 201.23 feet to an iron pipe labeled LS 2048; thence South 89(Degree) 35' 25" East, 619.16 feet to an iron pipe labeled LS 2048, said point being on the Southwesterly right-of-way line of Clyde Morris Boulevard; thence South 40(Degree) 56' 13" East along the Southwesterly right-of-way line of said Clyde Morris Boulevard a distance of 1061.80 feet to an iron pipe labeled LS 2048, said point being on the East line of the West one-half of the Northeast one-quarter of the aforementioned Section 7, Township 16 South, Range 33 East; thence South 00(Degree) 34' 32" West along the East line of the West one-half of the Northeast one-quarter of said Section 7, a distance of 2362.20 feet to an iron pin labeled LB 707, said point being on the North line of the 230 foot wide Florida Power and Light Company right-of-way, as described in Official Records Book 1664, Pages 448, 449, and 450 of the Public Records of Volusia County, Florida; thence North 89o 13' 53" West along the North line of the 230 foot wide Florida Power and Light Company right-of-way a distance of 1321.12 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence North 00(Degree) 23' 35" East along the West line of the West one-half of the Northeast one-quarter a distance of 400.00 feet to an iron pipe labeled LS 2048; thence North 89(Degree) 13' 53" West, 440.02 feet to an iron pipe labeled LS 2048, said point being the centerline of a drainage ditch; thence North 00(Degree) 23' 35" East along said drainage ditch centerline a distance of 1250.34 feet to an iron pipe labeled LS 2048; thence South 89(Degree) 13' 53" East, 440.02 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence South 00(Degree) 23' 35" West along the West line of the West one-half of the Northeast one-quarter a distance of 12.16 feet to an iron pipe labeled LS 2048; thence South 89(Degree) 27' 21" East, 661.65 feet to an iron pipe labeled LS 2048; thence North 00(Degree) 25' 26" East, 984.46 feet to an iron pipe labeled LS 2048; thence North 01(Degree) 14' 43" East, 328.45 feet to a nail in disk in pavement labeled LB 707; thence North 89(Degree) 33' 59" West, 661.95 feet to the Point of Beginning.

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APOLLO VILLAGE PROPERTY

That portion of the Southwest quarter of Section 21, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 21;  
THENCE North 00(Degree) 34' 15" East (assumed bearing) along the West line of said Section 21, a distance of 786.55 feet;  
THENCE South 89(Degree) 25' 45" East 65.00 feet to the POINT OF BEGINNING;  
THENCE continuing South 89(Degree) 25' 45" East 126.95 feet;  
THENCE North 87(Degree) 23' 37" East 116.40 feet;  
THENCE South 00(Degree) 30' 51" West 124.13 feet to the Northeast corner of the property described in Docket 10568, page 613, records of Maricopa County, Arizona;  
THENCE South 00(Degree) 34' 44" West along the East line of said property 156.09 feet to a point on a line 500.00 feet North and parallel to the South line of said Section 21;  
THENCE North 88(Degree) 16' 15" East along said line 530.61 feet to the Northeast corner of the property described in Docket 6785, page 268, records of Maricopa County, Arizona;  
THENCE South 00(Degree) 27' 31" West 435.31 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;  
THENCE North 88(Degree) 16' 15" East along said line 51.93 feet;  
THENCE North 00(Degree) 20' 35" East 127.50 feet;  
THENCE North 02(Degree) 21' 45" West 308.14 feet;  
THENCE North 88(Degree) 15' 20" East 445.27 feet;  
THENCE North 21(Degree) 52' 10" East 195.00 feet;  
THENCE South 89(Degree) 39' 20" East 285.57 feet to a point on the West line of the East 60 acres of the Southwest quarter of said Section 21;  
THENCE North 00(Degree) 20' 40" East along said West line 807.45 feet to a point on the Southerly line of the property described in Docket 15563, page 420, records of Maricopa County, Arizona;  
THENCE South 86(Degree) 58' 05" West along said South line and the South line of the property described in Docket 15133, page 167, records of Maricopa County, Arizona, 1,366.81 feet to a point 309.53 feet East of the West line of said Section 21;  
THENCE South 00(Degree) 37' 00" West 616.40 feet (620.95 feet, record) to the North line of the property described in Docket 6099, page 277, records of Maricopa County, Arizona;  
THENCE North 89(Degree) 25' 45" West along said North line 243.43 feet to a point on a line 65.00 feet East of and parallel to the West line of said Section 21;  
THENCE South 00(Degree) 34' 15" West along said line 55.48 feet to the POINT OF BEGINNING;

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
THENCE North 88(Degree) 16' 15" East (an assumed bearing) along the South line of said Section 21, a distance of 840.11 feet;  
THENCE North 00(Degree) 27' 31" East 65.05 feet to the POINT OF BEGINNING;  
THENCE continuing North 00(Degree) 27' 31" East along the East line of the property described in Docket 6785, page 259, records of Maricopa County, Arizona, 435.31 feet;  
THENCE North 87(Degree) 25' 34" East 36.52 feet;  
THENCE South 02(Degree) 21' 45" East 308.14 feet;

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THENCE South 00(Degree) 20' 35" West 127.50 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;  
THENCE South 88(Degree) 16' 15" West along said line 51.93 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
THENCE North 88(Degree) 08' 29" East (North 88(Degree) 16' 15" East, record) along the South line of said Section 21, a distance of 1,684.02 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;  
THENCE North 00(Degree) 06' 45" East 669.32 feet ( North 00(Degree) 20' 40" East 669.45, record) along said West line to the POINT OF BEGINNING;  
THENCE North 89(Degree) 47' 06" West (North 89(Degree) 39' 20" West, record) 115.00 feet;  
THENCE North 16(Degree) 08' 00" East 325.00 feet;  
THENCE North 52(Degree) 29' 10" East 31.95 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;  
THENCE South 00(Degree) 06' 45" West (South 00(Degree) 20' 40" West, record) along said West line 332.09 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
THENCE North 88(Degree) 16' 15" East along the South line of said Section 21, a distance of 892.17 feet;  
THENCE North 00(Degree) 20' 35" East 65.04 feet to a point on a line parallel to and 65.00 feet North of the South line of said Section 21;  
THENCE continuing North 00(Degree) 20' 35" East 127.50 feet;  
THENCE North 02(Degree) 21' 45" West 308.14 feet;  
THENCE North 88(Degree) 15' 20" East 445.27 feet;  
THENCE North 21(Degree) 52' 10" East 195.00 feet;  
THENCE South 89(Degree) 39' 20" East 21.00 feet to the POINT OF BEGINNING;  
THENCE continuing South 89(Degree) 39' 20" East 55.00 feet;  
THENCE North 00(Degree) 20' 40" East 40.00 feet;  
THENCE North 89(Degree) 39' 20" West 55.00 feet;  
THENCE South 00(Degree) 20' 40" West 40.00 feet to the POINT OF BEGINNING.

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CASA DEL SOL III PROPERTY

PARCEL NO. 1:

That part of Lot 3, A Subdivision of the East half of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, according to Book 11 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 24;  
THENCE West along the South line of said Section 24, a distance of 1,320.54 feet;  
THENCE North 01(Degree) 38' 30" East 55.02 feet to a point on a line that is 55.00 feet North of and parallel to said South line said line being the North line of Peoria Avenue and the TRUE POINT OF BEGINNING;  
THENCE West along said North line 627.98 feet;  
THENCE North 45(Degree) 44' 20" East 28.64 feet;  
THENCE North 01(Degree) 28' 40" East 307.70 feet;  
THENCE North 45(Degree) 00' 00" East 149.61 feet;  
THENCE North 32(Degree) 31' 59" West 76.22 feet;  
THENCE North 01(Degree) 38' 30" East 420.00 feet;  
THENCE North 89(Degree) 57' 50" East 11.71 feet;  
THENCE North 01(Degree) 38' 30" East 133.00 feet to a point on a non-tangent curve concave to the East the center of which bears North 80(Degree) 00' 01" East having a radius of 1,430.40 feet and an interior angle of 23(Degree) 03' 59";  
THENCE Northeasterly along said curve 575.86 feet;  
THENCE North 01(Degree) 38' 30" East 84.00 feet;  
THENCE North 89(Degree) 57' 50" East 738.38 feet;  
THENCE South 01(Degree) 38' 30" West 1,407.21 feet;  
THENCE West 200.00 feet;  
THENCE South 01(Degree) 38' 30" West 300.11 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A perpetual easement for the installation and maintenance of private utility lines and drainage, as created in instrument recorded in Docket 12335, page 1213, records of Maricopa County, Arizona, being 12.00 feet in width, being 6.00 feet on each side of the centerlines described as follows:

BEGINNING at the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;  
THENCE West 1,326.54 feet along the South line of said Section 24;  
THENCE North 01(Degree) 38' 30" East 55.00 feet to the TRUE POINT OF BEGINNING;  
THENCE North 01(Degree) 38' 30" East 306.11 feet;  
THENCE East 206.00 feet to the point of termination; and

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BEGINNING at a point which bears North 01(Degree) 38' 30" East 1,757.00 feet and South 89(Degree) 57' 50" West 1,120.55 feet from the Southeast corner of said Section 24;

THENCE South 89(Degree) 57' 50" West 1,498.24 feet to a point on the East line of the West 40.00 feet of the Southeast quarter of said Section 24 and the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 3:

A perpetual easement for irrigation purposes and for the use, construction and maintenance of an irrigation lateral, as created in instrument recorded in Docket 12335, page 1215, records of Maricopa County, Arizona, being 5.00 feet in width, being 2.50 feet on each side of the centerline described as follows:

BEGINNING at a point which bears North 01(Degree) 38' 30" East 1,760.50 feet and South 89(Degree) 57' 50" West 55.00 feet from the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE South 89(Degree) 57' 50" West 1,833.37 feet to the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 4:

A portion of the Southeast quarter of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

A strip of land 6.00 feet in width located West of and parallel to the Easterly boundary line of that certain Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona, described as follows:

COMMENCING at the South quarter corner of Section 24;

THENCE North 01(Degree) 28' 40" East along the West line of the Southeast quarter of said Section 24, 1,760.87 feet to a point on the South line of Lot 2 as shown in Book 11 of Maps, page 30, records of Maricopa County, Arizona;

THENCE North 89(Degree) 55' 44" East along said South line 794.70 feet to a point 6.00 feet West of and parallel to said Easterly boundary line of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the POINT OF BEGINNING;

THENCE continuing North 89(Degree) 55' 44" East, along said South line, 6.00 feet to the Northeast corner of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the Northwest corner of Quit Claim Deed Recorded in Document No. 95-388831, records of Maricopa County, Arizona;

THENCE South 01(Degree) 38' 36" West, along the Easterly boundary line of said Special Warranty Deed and the Westerly boundary line of said Quit Claim Deed, 84.00 feet to the beginning of a non-tangent curve concave Easterly and having a radial bearing of North 76(Degree) 55' 57" West;

THENCE Southerly along said curve and along said Easterly and Westerly boundary lines and through a central angle of 19(Degree) 06' 47" an arc length of 477.16 feet;

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THENCE South 89(Degree) 55' 44" West to a point 6.00 feet West of and parallel to said Easterly and Westerly boundary lines to the beginning of a curve concave Easterly and having a radius of 1,436.40 feet;  
THENCE Northerly along said curve 6.00 feet West of and parallel to said Easterly and Westerly boundary lines through a central angle of 19(Degree) 03' 50" an arc length of 477.93 feet;  
THENCE North 01(Degree) 38' 36" East 6.00 feet West of and parallel to said Easterly and Westerly boundary lines 83.22 feet to the POINT OF BEGINNING.

EXHIBIT C



Recording Requested by  
and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC # A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No. : 31-0900553R  
Property Name: Woodland Hills

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

The parties to this DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of July 31, 2001 are MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Trustor"), with a mailing address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, the PUBLIC TRUSTEE OF ADAMS COUNTY, STATE OF COLORADO ("Trustee"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"), with a mailing address at 1320 Willow Pass Road, Suite 205, Concord, California 94520.

R E C I T A L S

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Beneficiary, and Beneficiary proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Deed of Trust, payable to the order of Beneficiary in the principal amount of the Loan and having a maturity date of September 1, 2011.
- B. The loan documents include this Deed of Trust, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. DEED OF TRUST

- 1.1 GRANT. For the purposes of and upon the terms and conditions of this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all estate, right, title, power, privileges and interest which Trustor now has or may hereafter acquire in, to, under or derived from any or all of the following:

- a. That real property ("Land") located in Thornton, county of Adams, state of Colorado, and more particularly described on Exhibit A attached hereto;
- b. All appurtenances, easements, rights of way, water and water rights, wells and well rights, well permits, spring and spring rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock rights or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, all crops, timber, trees, and landscaping, historically used, or now or later used or useful in connection with, appurtenant to or related to the Land and all of Trustor's rights and interest to obtain sewer and other services from service districts;
- c. All buildings, structures, facilities, other improvements and fixtures whether real, personal, or mixed, and whether or not affixed, now or hereafter located on the Land;
- d. All machines, articles, apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;
- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Trustor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 OBLIGATIONS SECURED. Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- a. Full and punctual payment to Beneficiary of all sums at any time owing under the Note;
  - b. Payment and performance of all covenants and obligations of Trustor under this Deed of Trust including, without limitation, indemnification obligations and advances made to protect the Property;
  - c. Payment and performance of all additional covenants and obligations of Borrower and Trustor under the Loan Documents;
  - d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Deed of Trust recites are secured hereby;
  - e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for

the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust;

- f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and
- g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation:
  - (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Trustor irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Beneficiary confers upon Trustor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Beneficiary, to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation or any other obligation of Borrower, Trustor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to

such notice. If and when no Default exists, Beneficiary shall re-confer the License upon Trustor until the occurrence of another Default.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Beneficiary any duty to produce rents or profits. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (f) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 COVENANTS.

- a. ALL LEASES. Trustor shall, at Trustor's sole cost and expense:
- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
  - (ii) use reasonable efforts to keep the Property leased at all times to tenants which Trustor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
  - (iii) promptly upon Beneficiary's request, deliver to Beneficiary a copy of each requested Lease and all amendments thereto and waivers thereof; and
  - (iv) promptly upon Beneficiary's request, execute and record any additional assignments of landlord's interest under any Lease to Beneficiary and specific subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Beneficiary.

Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;
- (vii) except upon Beneficiary's request, execute any assignment of landlord's interest in any Lease; or
- (viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Trustor shall deposit with Beneficiary any sums received by Trustor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Trustor shall be held in trust by Trustor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Trustor with respect to any Lease which is less than \$50,000 shall be payable to Trustor. All

such sums received by Beneficiary with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12b) and shall be deposited by Beneficiary into a pledged account in accordance with Section 6.12b. If no Default exists, Beneficiary shall release such Impounds to Trustor from time to time as necessary to pay or reimburse Trustor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Beneficiary shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Trustor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Trustor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Beneficiary may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Beneficiary shall release any remaining such Impounds relating to the affected space to Trustor. Trustor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

b. MAJOR LEASES. Trustor shall, at Trustor's sole cost and expense, give Beneficiary prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Beneficiary; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Beneficiary. Trustor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4a as well as by the provisions of this Section.

c. FAILURE TO DENY REQUEST. Beneficiary's failure to deny any written request by Trustor for Beneficiary's consent under the provisions of Sections 3.4a or 3.4b within 10 Business Days after Beneficiary's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Beneficiary's consent to such request.

3.5 RIGHT OF SUBORDINATION. Beneficiary may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person. Notice is hereby given to each tenant

under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

#### ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 SECURITY INTEREST. Trustor grants and assigns to Beneficiary a security interest to secure payment and performance of all of the Secured Obligations, in all of Trustor's right, title and interest in and to the following described personal property in which Trustor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Trustor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Colorado Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2 COVENANTS. Trustor agrees: (a) to execute and deliver such documents as Beneficiary reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Beneficiary at least 30 days' prior written notice thereof; and (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Beneficiary's rights hereunder.
- 4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any

obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF BENEFICIARY UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

- a. DISPOSITION OF COLLATERAL. Beneficiary may: (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place reasonably designated by Beneficiary; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales. In the event of a foreclosure sale, whether made by the Trustee under the terms hereof or under judgment of a court; (iv) the Collateral may, at the option of the Beneficiary, be sold as a whole; (v) it shall not be necessary that Beneficiary take possession of the Collateral prior to the time any sale is conducted nor shall it be necessary that said Collateral be present at the location of such sale; and (vi) Beneficiary may designate any one or more persons as agent to perform any act necessary to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary; and
- b. OTHER RIGHTS. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Beneficiary reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Beneficiary may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of the Collateral.

It is hereby agreed that to the extent permitted by law, all of the Collateral is to be deemed and held to be a part of and affixed to the Property. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing Collateral which is leased by Trustor. Notwithstanding the foregoing, all of the foregoing Collateral shall be owned by Trustor and no leasing or installment sales or other financing in connection therewith shall be permitted without the prior written approval of Beneficiary. All of the Collateral shall be kept at the location of the Land.

Beneficiary shall give Trustor at least 10 Business Days' prior written notice of the time and place of any public sale of such Collateral or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such Collateral which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided shall be deemed to have been a public sale thereof in a commercially reasonable manner if held contemporaneously with the sale under power of sale (nonjudicial foreclosure) as provided in Section 7.3(c)(ii) hereof upon giving the same notice with respect to the sale of the Collateral hereunder as is required under said Section 7.3(c)(ii). Beneficiary shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Beneficiary first to the reasonable expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Beneficiary may from time to time elect.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Trustor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants to Beneficiary that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. LEGAL STATUS. Trustor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Trustor and Borrower are organized. Trustor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. PERMITS. Trustor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged in compliance with applicable law.
- c. AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- d. VIOLATIONS. The execution, delivery and performance by Trustor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor or Borrower is a party or by which Trustor or Borrower is bound.
- e. LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Trustor or Borrower other than those previously disclosed in writing by Trustor or Borrower to Beneficiary.
- f. FINANCIAL STATEMENTS. The financial statements of Trustor and Borrower, of each general partner (if Trustor or Borrower is a partnership), of each member (if Trustor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Trustor or Borrower to Beneficiary: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan, or other accounting standards approved by Beneficiary. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Trustor or Borrower to Beneficiary and approved in writing by Beneficiary.



- g. REPORTS. All reports, documents, instruments and information delivered to Beneficiary in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Beneficiary accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. INCOME TAXES. There are no material pending assessments or adjustments of Trustor's or Borrower's income tax payable with respect to any year.
- i. SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. TITLE. Trustor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Deed of Trust is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Beneficiary and shown in the title insurance policy insuring the lien of this Deed of Trust; and (iii) other matters, if any, previously disclosed to Beneficiary by Trustor in a writing specifically referring to this representation and warranty.
- k. MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust, other than those (if any) previously approved by Beneficiary and shown on the title insurance policy insuring the lien of this Deed of Trust.
- l. ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Beneficiary, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.
- n. COLLATERAL. Trustor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Beneficiary by Trustor in writing specifically referring to this representation and warranty. Trustor's chief executive office (or residence, if applicable) is located at the address shown on page one of this Deed of Trust. Trustor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Trustor delivered to Beneficiary are complete and accurate in every respect. Trustor's legal name is exactly as shown on page one of this Deed of Trust.
- o. CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Beneficiary, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

- p. HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Trustor to Beneficiary.
- q. HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.
- r. HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).
- s. WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Trustor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.
- v. CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.
- w. HOMESTEAD. There is no homestead or other exemption available to Trustor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose this Deed of Trust.
- x. SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Trustor, and Trustor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Trustor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Trustor is able to pay its debts as they become due.
- y. SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Trustor hereby represents, warrants and covenants to Beneficiary that with respect to both Trustor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Trustor:

- a. each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

- b. each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- c. each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;
- d. each such entity has not engaged and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;
- e. if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;
- f. if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;
- g. each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;
- h. each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured trade debt not to exceed \$1,000,000 in the aggregate with respect to Trustor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Trustor, as applicable) and is paid within thirty (30) days from the date incurred;
- i. each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- j. each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- k. each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- l. each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- m. each such entity has conducted and will conduct its business in its own name or in a registered trade name;
- n. each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- o. each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;

- p. each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- q. each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- r. each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- s. each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;
- t. each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;
- u. each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;
- v. each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;
- w. each such entity has not made and will not make loans to any person or entity;
- x. each such entity has not and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;
- y. each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;
- z. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- aa. each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- bb. each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- cc. if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;
- dd. if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this

Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;

- ee. each such entity will, as a condition to the closing of the Loan, deliver to Beneficiary a nonconsolidation opinion in form and substance acceptable to Beneficiary;
- ff. if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and
- gg. if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

#### ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Trustor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Beneficiary is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Beneficiary a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Beneficiary or Trustee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Deed of Trust and perform Trustor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Trustor shall not, without Beneficiary's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property;

(j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Deed of Trust, Trustor agrees as follows:

a. PROHIBITED ACTIVITIES. Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Trustor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

b. HAZARDOUS MATERIALS LAWS. Trustor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

c. NOTICES. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened in writing against Trustor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.

d. REMEDIAL ACTION. In response to knowledge or notification to Trustor of the presence of any Hazardous Materials on, under or about the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

- e. INSPECTION BY BENEFICIARY. Upon reasonable prior notice to Trustor (except in the case of an emergency) and during normal business hours, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- f. LEGAL EFFECT OF SECTION. Trustor and Beneficiary agree that: (i) this Hazardous Materials Section is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.
- 6.3 COMPLIANCE WITH LAWS. Trustor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Trustor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged.
- 6.4 LITIGATION. Trustor shall promptly notify Beneficiary in writing of any litigation pending or threatened in writing against Trustor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened (in writing) litigation against Trustor or Borrower if the aggregate damage claims against Trustor or Borrower exceed \$500,000.
- 6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Trustor shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Trustor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6 ACCOUNTING RECORDS. Trustor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan or other accounting standards approved by Beneficiary. Trustor shall permit and shall cause Borrower to permit any representative of Beneficiary, at any reasonable time and from time to time, upon reasonable prior notice to Trustor, to inspect, audit and examine such books and records and make copies of same.
- 6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor shall pay to Beneficiary the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Beneficiary's in-house or outside counsel, incurred by Beneficiary in connection with: (a) appraisals and inspections of the Property or Collateral required by Beneficiary as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Beneficiary at Trustor's request or wholly or partially for the benefit of Trustor (including, without limitation,

the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Trustor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Beneficiary may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Beneficiary together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Trustor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Trustor's right to contest such matters under this Deed of Trust or as expressly permitted in the Loan Documents, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Trustor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Beneficiary for eventual payment thereof in the event that Trustor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

6.9 TAXES AND OTHER LIABILITIES. Trustor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Trustor shall promptly provide to Beneficiary copies of all tax and assessment notices pertaining to the Property. Trustor hereby authorizes Beneficiary to obtain, at Trustor's expense, a tax service contract which shall provide tax information on the Property to Beneficiary for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Trustor shall insure the Property against loss or damage by fire and such other hazards as Beneficiary shall from time to time require; provided, however, (a) Beneficiary, at Beneficiary's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and (b) Beneficiary, at Beneficiary's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Trustor shall also carry public liability insurance and such other insurance as Beneficiary may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Beneficiary and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Trustor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Trustor to Beneficiary under any of the Loan Documents remain outstanding at Trustor's expense, with companies, and in substance and form satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance shall incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurance; (d) the solvency of any insurer; or (e) the payment of claims.

6.11 CONDEMNATION AND INSURANCE PROCEEDS.

a. ASSIGNMENT OF CLAIMS. Trustor absolutely and irrevocably assigns to Beneficiary all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by



reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Beneficiary, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Beneficiary. Beneficiary may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Trustor may settle as provided herein), but shall not be responsible for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Beneficiary.

- b. APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Beneficiary; (cc) a cost breakdown for the work; (dd) if reasonably required by Beneficiary, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Beneficiary; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security. Trustor acknowledges that the specific conditions described above are reasonable.
- c. APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Beneficiary chooses.

#### 6.12 IMPOUNDS.

- a. POST-DEFAULT IMPOUNDS. If required by Beneficiary at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Trustor shall deposit with Beneficiary such amounts ("Post-Default Impounds") on such dates (determined by Beneficiary as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Beneficiary. Beneficiary in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Beneficiary not exceeding 1 year and shall determine the fractional portion thereof that Trustor shall deposit with Beneficiary on each date specified by Beneficiary during such period. If the

Post-Default Impounds paid by Trustor are not sufficient to pay the related Costs, Trustor shall deposit with Beneficiary upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Trustor in addition to (but without duplication of) any other Impounds (as defined below).

b. ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Beneficiary or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Beneficiary shall not be a trustee, special depository or other fiduciary for Trustor with respect to such account, and the existence of such account shall not limit Beneficiary's rights under this Deed of Trust, any other agreement or any provision of law. If no Default exists, Beneficiary shall apply all Impounds to the payment of the related Costs, or in Beneficiary's sole discretion may release any or all Impounds to Trustor for application to and payment of such Costs. If a Default exists, Beneficiary may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Trustor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Trustor hereunder shall not be diminished by deposits of Impounds made by Trustor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Deed of Trust, Beneficiary may assign all Impounds in its possession to Beneficiary's assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Beneficiary may elect, Beneficiary shall pay to Trustor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Trustor under Section 6.9, (ii) all insurance premiums payable by Trustor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Trustor shall deliver to Beneficiary, promptly upon receipt, all bills for Costs for which Beneficiary has required Post-Default Impounds.

6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee hereunder at Trustor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Trustor's or Beneficiary's rights. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14 RIGHT OF INSPECTION. Beneficiary and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Trustor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms of this Deed of Trust. Beneficiary shall use reasonable efforts to assure that Beneficiary's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Trustor or Trustor's tenants on the Property.

6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN TRUSTOR. Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Beneficiary or as otherwise expressly permitted in the Note, Trustor shall not: (a) cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business); or (b) cause or permit a Transfer of any direct or indirect interest in any partnership, limited liability company, corporation, trust, or other entity comprising all or any portion of or holding any direct or indirect interest in Trustor or Borrower

(other than the sale or exchange of a limited partnership interest or a non-managing membership interest). If any Transfer not expressly permitted in the Note or this Deed of Trust is made without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Trustor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Beneficiary's consent to any Transfer may be withheld, conditioned or delayed in Beneficiary's sole and absolute discretion.

6.16 INTENTIONALLY OMITTED.

6.17 COMPENSATION OF TRUSTEE. Trustor shall pay to Trustee compensation and reimbursement for services and expenses in the administration of this trust pursuant to C.R.S. Sections 38-37-102 et seq., including, without limitation, reasonable attorneys' fees. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.18 EXCULPATION. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Beneficiary and no such liability shall be asserted or enforced against Beneficiary, all such liability being expressly waived and released by Trustor.

6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Deed of Trust, Trustor agrees to defend, indemnify and hold harmless the Beneficiary Group (as defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Beneficiary Group; (b) this Deed of Trust; (c) the execution of this Deed of Trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Trustor to perform Trustor's obligations under this Deed of Trust or the other Loan Documents; (e) any alleged obligation or undertaking on the Beneficiary Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Trustor or any contractor, agent, employee or representative of Trustor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Trustor under Sections 5.1.p, 5.1.q, 5.1.r, or 6.2 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Beneficiary Group, or any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Deed of Trust on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Deed of Trust, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Beneficiary Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Beneficiary Group; and (cc) the costs, whether foreseeable or

unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Beneficiary Group", as used herein, shall mean (1) Beneficiary (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Beneficiary, (3) the directors, officers, employees and agents of Beneficiary and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Trustor shall pay immediately upon Beneficiary's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Trustor agrees to use legal counsel reasonably acceptable to the Beneficiary Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS DEED OF TRUST, BUT TRUSTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20 INTENTIONALLY OMITTED.

6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.

6.22 SALE OR PARTICIPATION OF LOAN. Trustor agrees that Beneficiary may at any time sell, assign, participate or securitize all or any portion of Beneficiary's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Beneficiary with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Trustor, any partner or member of Trustor, any constituent partner or member of Trustor, any guarantor and any nonborrower trustor). In the event of any such sale, assignment, participation or securitization, Beneficiary and the other parties to the same shall share in the rights and obligations of Beneficiary set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Trustor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Trustor to each purchaser, assignee or participant, and Trustor shall, within 15 days after request by Beneficiary, (x) deliver an estoppel certificate verifying for the benefit of Beneficiary and any other party designated by Beneficiary the status and the terms and provisions of the Loan in form and substance acceptable to Beneficiary, (y) provide any information, legal opinions or documents regarding Trustor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Beneficiary or Beneficiary's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Trustor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Trustor's rights or increasing Trustor's obligations. The indemnity obligations of Trustor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23 RELEASE OF DEED OF TRUST. If the principal and interest and all other sums due or to become due under the Note shall have been paid, then and in that event only, the estate, right, title and interest of Trustee and Beneficiary in the Property shall cease, and upon (a) written notice from Beneficiary that all of the Secured Obligations have been paid, (b) presentment of the original Note marked "cancelled," (c) surrender

of this Deed of Trust and said cancelled Note to Trustee, (d) execution of the statutory form of request for release by Beneficiary and Trustee, in due form at Trustor's cost, and (e) payment of Trustee's fees and costs and all recording costs, Trustee shall release this Deed of Trust and the Property shall become wholly free of the liens, security interests, conveyances and assignments created and evidenced hereby. No release of this Deed of Trust or the lien hereof shall be valid unless executed by Beneficiary and Trustee.

- 6.24 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 6.25 MANAGEMENT AGREEMENTS. Without the prior written consent of Beneficiary, Trustor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Trustor represents, warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Trustor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Trustor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Beneficiary or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary.

#### ARTICLE 7. DEFAULT

- 7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. OPTIONAL DEFAULT. An "Optional Default" shall occur, at Beneficiary's option, upon the occurrence of any of the following events:
- (i) MONETARY. Borrower or Trustor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including without limitation, any monthly payment due under the Note.
  - (ii) FAILURE TO PERFORM. Borrower or Trustor shall fail to observe, perform or discharge any of Borrower's or Trustor's obligations, covenants, conditions or agreements, other than Borrower's or Trustor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Trustor, as the case may be, by Beneficiary or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Trustor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
  - (iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Trustor, or a guarantor, if any, to Beneficiary or in connection with any of the Loan Documents, or as an inducement to Beneficiary to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.
  - (iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Beneficiary) of the Property; or the sequestration or

attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Trustor under any of the Loan Documents, or any material portion of the other assets of Borrower or Trustor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

- (v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Beneficiary) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Trustor promptly notifies Beneficiary of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Trustor delivers to Beneficiary immediately available funds in an amount sufficient, in Beneficiary's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of such funds and no Default occurs thereafter, Beneficiary shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Deed of Trust have been satisfied. Trustor acknowledges that the specific conditions described above are reasonable.
- (vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Beneficiary and relied upon by Beneficiary in making the Loan, and which change Beneficiary reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Trustor to pay or perform Borrower's or Trustor's obligations in accordance with the terms of the Note, this Deed of Trust, and the other Loan Documents.

b. AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

- (i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.
- (ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Beneficiary regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Trustor, any general partner or managing member of Borrower or Trustor, or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Beneficiary may, at its option, declare all sums owing to Beneficiary under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Beneficiary under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Beneficiary shall have all of the following rights and remedies:

- a. ENTRY ON PROPERTY. With or without notice, and without releasing Trustor from any Secured Obligation, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Beneficiary or Trustee deem necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Trustor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Beneficiary deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority hereto, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property for Hazardous Materials in which regard the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Beneficiary's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them. All sums expended by Beneficiary in connection with such entry and possession, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note;
- b. APPOINTMENT OF RECEIVER. With or without notice to Trustor or Borrower and without a hearing, which are hereby waived by Trustor and Borrower, to ex parte to apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and Beneficiary's right to collect Payments, and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; or (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; and Trustor hereby irrevocably consents to such appointment and waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive Payments under the Leases pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage,

maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable. Such receivership shall, at the option of Beneficiary, continue until full payment of the Secured Obligations or until title to the Property shall be passed by foreclosure sale under this Deed of Trust or deed in lieu of foreclosure;

c. FORECLOSURE.

- (i) JUDICIAL FORECLOSURE; INJUNCTION. To commence and maintain or cause Trustee to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (ii) NONJUDICIAL FORECLOSURE. To commence foreclosure proceedings against the Property by exercise of the power of sale herein contained and cause the Property to be sold in accordance with the requirements and procedures provided by applicable law in a single parcel or in several parcels at the option of Beneficiary. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall file with Trustee a written notice of election and demand for sale and all other documents, certificates and affidavits as are required by applicable law. Thereupon, Trustee shall cause a copy of the notice of election and demand for sale to be recorded in the Clerk and Recorder's Office of the county in which the Property is located. Trustee shall then give such notices as are required by law and shall conduct the foreclosure sale of the Property in accordance with applicable law. Trustee shall sell and dispose of the Property (en masse or in separate parcels, as Trustee may think best) and all the right, title and interest of Trustor and its successors and assigns therein, at public auction at any place permitted by applicable law for the highest and best price the same will bring in cash. Subject to compliance with applicable law, Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. When the sale is held, Trustee shall execute and deliver to the purchaser of the Property or portions thereof at such sale a certificate of purchase as required by applicable law. Thereafter, following the expiration of all applicable redemption periods and satisfaction of any other requirements prescribed by law, Trustee shall execute and deliver a deed for the Property to the person entitled thereto, which deed shall be in such form as is required by law. Such sale and said deed shall be a perpetual bar, both in law and equity, against Trustor and its successors and assigns, and all other persons claiming the Property or any part thereof by, through, from or under Trustor. Beneficiary may purchase the Property, or any part thereof, and may bid in any part or all of the Secured Obligations and it shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money;
- (iii) GENERAL. (aa) Beneficiary may, by following the procedures and satisfying the requirements prescribed by applicable law, judicially or nonjudicially foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Deed of Trust on the remaining portion of the Property not foreclosed. (bb) If a nonjudicial foreclosure hereunder shall be commenced by Trustee, Beneficiary may at any time before the sale of the Property direct Trustee to abandon the sale, and may then institute suit for the collection of the Note and the other Secured Obligations and for the judicial foreclosure of this Deed of Trust. If Beneficiary should institute a suit for the collection of the Note or any other Secured Obligation and for the judicial foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee to sell



the Property in accordance with the provisions of this Deed of Trust. (cc) Upon sale of the Property at any judicial or nonjudicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure, provided such amounts comprise a part of the Secured Obligations; (iii) estimated reasonable expenses and costs, net of income of holding, marketing and selling the Property, which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, (iv) the fact of additional collateral (if any), for the Secured Obligations; and (v) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (vi) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (vii) this paragraph does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (viii) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (ix) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property;

- d. MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary or either of them determine in their sole discretion;
- e. COLLECTION OF PAYMENTS. With or without taking possession of the Property, sue for or otherwise collect Payments under the Leases, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, against the Secured Obligations in such order as Beneficiary may determine in its discretion, without in any way curing or waiving any default.
- f. RIGHTS TO COLLATERAL. To exercise all rights Trustee or Beneficiary may have with respect to the Collateral under this Deed of Trust, the UCC or otherwise at law; and
- g. OTHER RIGHTS. To exercise such other rights as Trustee or Beneficiary may have at law or in equity or pursuant to the terms and conditions of this Deed of Trust or any of the other Loan Documents.

In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. If any foreclosure sale is effected, Trustee shall apply the proceeds of such sale in the following order of priority: First, to the costs, fees and expenses of exercising the power of sale and of sale, including, without limitation, the payment of the Trustee's fees

and attorneys' fees; Second, to the payment of the Secured Obligations which are secured by this Deed of Trust, in such order as Beneficiary shall determine in its sole discretion; Third, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and Fourth, to the Trustor or the Trustor's successor in interest, or in the event the Property has been sold or transferred to another, to the vested owner of record at the time of the Trustee's sale.

- 7.5 WAIVER OF MARSHALING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any Default or notice of default under this Deed of Trust, or nullify the effect of any notice of sale (unless all Secured Obligations then due have been paid or performed and Trustor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Beneficiary in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and upon demand all costs and expenses incurred by Trustee and Beneficiary in the enforcement of the terms and conditions of this Deed of Trust (including, without limitation, statutory trustee's fees, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Trustor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (b) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 7.9 REMEDIES CUMULATIVE. All rights and remedies of Beneficiary and Trustee under this Deed of Trust and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Deed of Trust as though it were a mortgage). Beneficiary may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.
- 7.10 DISCONTINUANCE OF PROCEEDINGS. If Beneficiary shall invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Trustor and Beneficiary shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the same had never been invoked.

#### ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The

Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Beneficiary or Trustee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Beneficiary's or Trustee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Beneficiary or Trustee in exercising any such right or remedy shall be construed to preclude Beneficiary or Trustee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Trustor shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances.
- 8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Beneficiary's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Beneficiary unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Deed of Trust or any of the other Loan Documents, such costs or expenses shall be reasonable.
- 8.4 PERMITTED CONTESTS. After prior written notice to Beneficiary, Trustor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Trustor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Trustor pursues the contest diligently, in a manner which Beneficiary determines is not prejudicial to Beneficiary, and does not impair the lien of this Deed of Trust; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Beneficiary shall not be in any danger of any civil or criminal liability; and (d) if required by Beneficiary, Trustor deposits with Beneficiary any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Beneficiary to protect Beneficiary from the consequences of the contest being unsuccessful. Trustor's right to contest pursuant to the terms of this provision shall in no way relieve Trustor or Borrower of its obligations under the Loan or to make payments to Beneficiary as and when due.
- 8.5 FURTHER ASSURANCES. Trustor shall, upon demand by Beneficiary or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Trustor and Beneficiary regarding their respective rights and obligations under this Deed of Trust or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

- 8.7 TRUSTOR AND BENEFICIARY DEFINED. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.
- 8.8 DISCLAIMERS.
- a. RELATIONSHIP. The relationship of Trustor and Beneficiary under this Deed of Trust and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the other Loan Documents: (i) Beneficiary is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Trustor, and Beneficiary does not intend to ever assume such status; (ii) Beneficiary's activities in connection with this Deed of Trust and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Beneficiary does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Beneficiary shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor.
- b. NO LIABILITY. Beneficiary shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor or any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.
- 8.9 SEVERABILITY. If any term of this Deed of Trust or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law.
- 8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Beneficiary under the deed of trust established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the deed of trust with any security interest created by the security agreement. Beneficiary may elect to exercise or enforce any of its rights, remedies or interests under either or both the deed of trust or the security agreement as Beneficiary may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the deed of trust and the security agreement.
- 8.11 MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 8.12 OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.

- 8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Deed of Trust as a "Trustor" agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.
- 8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Trustor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17 GOVERNING LAW. This Deed of Trust was accepted by Beneficiary in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Deed of Trust, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 enforcement of Beneficiary's STATUTORY POWER OF SALE and all other remedies granted hereunder and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Deed of Trust, the Note and other Loan Documents.
- 8.18 CONSENT TO JURISDICTION. Trustor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Trustor against Beneficiary, arising out of or relating to this Deed of Trust, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Trustor's principal place of business is located over any suit, action or proceeding, brought by Beneficiary against Trustor, arising out of or relating to this Deed of Trust, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral. Trustor irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 8.19 EXHIBITS. Exhibit A is incorporated into this Deed of Trust by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All notices and other communications that are required or permitted to be given to a party under this Deed of Trust or the other Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Deed of Trust and the facsimile numbers for the parties are as follows:

Beneficiary:  
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Trustor:  
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WELLS FARGO BANK, N.A.  
FAX No.: (925) 691-5947

MHC STAGECOACH, L.L.C.  
FAX No.: (312) 279-1715

Trustor's principal place of business is at the address set forth on page 1 of this Deed of Trust. A copy of any notice to Trustor shall be sent as follows:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Trustor whose address is set forth on page 1 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. BENEFICIARY (BY ITS ACCEPTANCE HEREOF) AND TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF BENEFICIARY OR TRUSTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER INTO THIS DEED OF TRUST.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller  
-----

Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK            )

The foregoing instrument was acknowledged before me this 8/1, 2001 by John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company.

WITNESS my hand and official seal.

                                  /s/ Mary Dobronski  
-----  
Print Name: Mary Dobronski

My Commission Expires:

11/3/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any:\_\_\_\_\_



EXHIBIT A  
DESCRIPTION OF LAND

Exhibit A to DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Trustor", PUBLIC TRUSTEE OF ADAMS COUNTY, STATE OF COLORADO, as "Trustee", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Beneficiary".

Description of Land. The Land referred to in this Deed of Trust is situated in the county of Adams, state of Colorado and more particularly known as Thornton, Colorado and is described as follows:

Northwest 1/4 of the Southeast 1/4 and the North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West of the 6th P.M., County of Adams, State of Colorado,

EXCEPT portions dedicated for County roads;

AND EXCEPT that part described as follows:

Beginning at the center of Section 21, Township 2 South, Range 68 West of the 6th P.M., thence South 89 degrees 53 minutes East along the North line of the Southeast 1/4, Section 21, a distance of 40.00 feet; thence South parallel to the West line of the Southeast 1/4 of said Section, 30.00 feet to the True Point of Beginning; thence South 89 degrees 53 minutes East parallel to the North line of the Southeast 1/4 a distance of 180.00 feet; thence South parallel to the West line of the Southeast 1/4, 150.00 feet; thence North 89 degrees 53 minutes West parallel to the North line of the Southeast 1/4, 180.00 feet; thence North parallel to the West line of the Southeast 1/4, 150.00 feet to the True Point of Beginning, being in the City of Thornton, County of Adams, State of Colorado;

AND EXCEPT that part described as follows:

A part of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West, of the 6th P.M., County of Adams, State of Colorado, described as follows:  
Beginning at a point 220.00 feet East and 180.00 feet South of the Northwest corner of said Southeast 1/4; thence Southerly and parallel to the West line of said Southeast 1/4 a distance of 393.93 feet; thence on an angle to the right of 90 degrees a distance of 180.00 feet to a point 40 feet East of the West line of said Southeast 1/4; thence on an angle to the right of 90 degrees and parallel to said West line a distance of 394.76 feet to a point 180.00 feet South of the North line of said Southeast 1/4; thence on an angle to the right 90 degrees 16 minutes 40 seconds and parallel to said North line a distance of 180.00 feet to the Point of Beginning, County of Adams, State of Colorado.

EXHIBIT A

Recording Requested by  
and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC # A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No. : 31-0900553R  
Property Name: Apollo Village

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

The parties to this DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of July 31, 2001 are MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Trustor"), with a mailing address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, TRANSNATION TITLE INSURANCE COMPANY ("Trustee"), with a mailing address at 234 N. Central Avenue, Phoenix, Arizona, 85004 and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"), with a mailing address at 1320 Willow Pass Road, Suite 205, Concord, California 94520.

RECITALS

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Beneficiary, and Beneficiary proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Deed of Trust, payable to the order of Beneficiary in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Deed of Trust, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. DEED OF TRUST

- 1.1 GRANT. For the purposes of and upon the terms and conditions of this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may hereafter acquire in, to, under or derived from any or all of the following:

- a. That real property ("Land") located in Peoria, county of Maricopa, state of Arizona, and more particularly described on Exhibit A attached hereto;
- b. All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;
- c. All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
- d. All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;
- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Trustor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 OBLIGATIONS SECURED. Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- a. Full and punctual payment to Beneficiary of all sums at any time owing under the Note;
  - b. Payment and performance of all covenants and obligations of Trustor under this Deed of Trust, including, without limitation, indemnification obligations and advances made to protect the Property;
  - c. Payment and performance of all additional covenants and obligations of Borrower and Trustor under the Loan Documents;
  - d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Deed of Trust recites are secured hereby;
  - e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust;

- f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and
- g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation:
  - (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Trustor irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Beneficiary confers upon Trustor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Beneficiary, to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation or any other obligation of Borrower, Trustor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Beneficiary shall re-confer the License upon Trustor until the occurrence of another Default.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Beneficiary any duty to produce rents or profits. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (e) the exercise of or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (f) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 COVENANTS.

A. ALL LEASES. Trustor shall, at Trustor's sole cost and expense:

- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
- (ii) use reasonable efforts to keep the Property leased at all times to tenants whom Trustor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
- (iii) promptly upon Beneficiary's request, deliver to Beneficiary a copy of each requested Lease and all amendments thereto and waivers thereof; and
- (iv) promptly upon Beneficiary's request, execute and record any additional assignments of landlord's interest under any Lease to Beneficiary and specific subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Beneficiary.

Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;
- (vii) except upon Beneficiary's request, execute any assignment of landlord's interest in any Lease; or
- (viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Trustor shall deposit with Beneficiary any sums received by Trustor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Trustor shall be held in trust by Trustor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Trustor with respect to any Lease which is less than \$50,000 shall be payable to Trustor. All such sums received by Beneficiary with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12b) and shall be deposited by Beneficiary into a pledged account in accordance with Section 6.12b. If no Default exists, Beneficiary shall release such Impounds to Trustor from time to time

as necessary to pay or reimburse Trustor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Beneficiary shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Trustor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Trustor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Beneficiary may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Beneficiary shall release any remaining such Impounds relating to the affected space to Trustor. Trustor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

b. MAJOR LEASES. Trustor shall, at Trustor's sole cost and expense, give Beneficiary prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Beneficiary; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Beneficiary. Trustor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4a as well as by the provisions of this Section.

c. FAILURE TO DENY REQUEST. Beneficiary's failure to deny any written request by Trustor for Beneficiary's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Beneficiary's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Beneficiary's consent to such request.

3.5 RIGHT OF SUBORDINATION. Beneficiary may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Trustor grants and assigns to Beneficiary a security interest to secure payment and performance of all of the Secured Obligations, in all of Trustor's right, title and interest in and to the following described personal property in which Trustor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Trustor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Arizona Uniform Commercial Code, as amended or recodified from time to time ("UCC").

4.2 COVENANTS. Trustor agrees: (a) to execute and deliver such documents as Beneficiary reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Beneficiary at least 30 days' prior written notice thereof; and (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Beneficiary's rights hereunder.

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF BENEFICIARY UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

- a. DISPOSITION OF COLLATERAL. Beneficiary may: (i) upon written notice, require Trustor to assemble the Collateral and make it available to Beneficiary at a place reasonably designated by Beneficiary; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and
- b. OTHER RIGHTS. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Beneficiary reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Beneficiary may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of the Collateral.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Beneficiary shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Beneficiary first to the reasonable expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Beneficiary may from time to time elect.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Trustor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants to Beneficiary that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. LEGAL STATUS. Trustor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Trustor and Borrower are organized. Trustor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. PERMITS. Trustor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged in compliance with applicable law.



- c. AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity .
- d. VIOLATIONS. The execution, delivery and performance by Trustor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor or Borrower is a party or by which Trustor or Borrower is bound.
- e. LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Trustor or Borrower other than those previously disclosed in writing by Trustor or Borrower to Beneficiary.
- f. FINANCIAL STATEMENTS. The financial statements of Trustor and Borrower, of each general partner (if Trustor or Borrower is a partnership), of each member (if Trustor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Trustor or Borrower to Beneficiary: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan, or other accounting standards approved by Beneficiary. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Trustor or Borrower to Beneficiary and approved in writing by Beneficiary.
- g. REPORTS. All reports, documents, instruments and information delivered to Beneficiary in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Beneficiary accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. INCOME TAXES. There are no material pending assessments or adjustments of Trustor's or Borrower's income tax payable with respect to any year.
- i. SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. TITLE. Trustor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Deed of Trust is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Beneficiary and shown in the title insurance policy insuring the lien of this Deed of Trust; and (iii) other matters, if any, previously disclosed to Beneficiary by Trustor in a writing specifically referring to this representation and warranty.
- k. MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust, other than those (if any) previously approved by Beneficiary and shown on the title insurance policy insuring the lien of this Deed of Trust.

- l. ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Beneficiary, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.
- n. COLLATERAL. Trustor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Beneficiary by Trustor in writing specifically referring to this representation and warranty. Trustor's chief executive office (or residence, if applicable) is located at the address shown on page one of this Deed of Trust. Trustor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Trustor delivered to Beneficiary are complete and accurate in every respect. Trustor's legal name is exactly as shown on page one of this Deed of Trust.
- o. CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Beneficiary, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.
- p. HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Trustor to Beneficiary.
- q. HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.
- r. HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).
- s. WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Trustor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

- v. CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.
- w. HOMESTEAD. There is no homestead or other exemption available to Trustor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose this Deed of Trust.
- x. SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Trustor, and Trustor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Trustor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Trustor is able to pay its debts as they become due.
- y. SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Trustor hereby represents, warrants and covenants to Beneficiary that with respect to both Trustor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Trustor:

- a. each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- b. each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- c. each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;
- d. each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;
- e. if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;
- f. if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;
- g. each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

- h. each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured trade debt not to exceed \_\_\_\_\_ in the aggregate with respect to Trustor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Trustor, as applicable) and is paid within thirty (30) days from the date incurred;
- i. each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- j. each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- k. each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- l. each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- m. each such entity has conducted and will conduct its business in its own name or in a registered trade name;
- n. each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- o. each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- p. each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- q. each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- r. each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- s. each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;
- t. each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;
- u. each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;
- v. each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;

- w. each such entity has not made and will not make loans to any person or entity;
- x. each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;
- y. each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;
- z. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- aa. each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- bb. each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- cc. if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;
- dd. if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;
- ee. each such entity will, as a condition to the closing of the Loan, deliver to Beneficiary a nonconsolidation opinion in form and substance acceptable to Beneficiary;
- ff. if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and
- gg. if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Trustor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Beneficiary is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Beneficiary a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Beneficiary or Trustee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Deed of Trust and perform Trustor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Trustor shall not, without Beneficiary's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Deed of Trust, Trustor agrees as follows:

a. PROHIBITED ACTIVITIES. Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Trustor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

b. HAZARDOUS MATERIALS LAWS. Trustor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous

Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

- c. NOTICES. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened in writing against Trustor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.
- d. REMEDIAL ACTION. In response to knowledge or notification to Trustor of the presence of any Hazardous Materials on, under or about the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- e. INSPECTION BY BENEFICIARY. Upon reasonable prior notice to Trustor (except in the case of an emergency) and during normal business hours, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- f. LEGAL EFFECT OF SECTION. Trustor and Beneficiary agree that: (i) this Hazardous Materials Section is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

6.3 COMPLIANCE WITH LAWS. Trustor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Trustor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged.

6.4 LITIGATION. Trustor shall promptly notify Beneficiary in writing of any litigation pending or threatened in writing against Trustor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened

(in writing) litigation against Trustor or Borrower if the aggregate damage claims against Trustor or Borrower exceed \$500,000.

- 6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Trustor shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Trustor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6 ACCOUNTING RECORDS. Trustor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan or other accounting standards approved by Beneficiary. Trustor shall permit and shall cause Borrower to permit any representative of Beneficiary, at any reasonable time and from time to time, upon reasonable prior notice to Trustor, to inspect, audit and examine such books and records and make copies of same.
- 6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor shall pay to Beneficiary the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Beneficiary's in-house or outside counsel, incurred by Beneficiary in connection with: (a) appraisals and inspections of the Property or Collateral required by Beneficiary as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Beneficiary at Trustor's request or wholly or partially for the benefit of Trustor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Trustor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Beneficiary may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Beneficiary together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Trustor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Trustor's right to contest such matters under this Deed of Trust or as expressly permitted in the Loan Documents, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Trustor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Beneficiary for eventual payment thereof in the event that Trustor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).
- 6.9 TAXES AND OTHER LIABILITIES. Trustor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Trustor shall promptly provide to Beneficiary copies of all tax and assessment notices pertaining to the Property. Trustor hereby authorizes Beneficiary to obtain, at Trustor's



expense, a tax service contract which shall provide tax information on the Property to Beneficiary for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Trustor shall insure the Property against loss or damage by fire and such other hazards as Beneficiary shall from time to time require; provided, however, Beneficiary, at Beneficiary's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and Beneficiary, at Beneficiary's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Trustor shall also carry public liability insurance and such other insurance as Beneficiary may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Beneficiary and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Trustor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Trustor to Beneficiary under any of the Loan Documents remain outstanding at Trustor's expense, with companies, and in substance and form satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance shall incur any liability for: (a) the existence, nonexistence, form or legal sufficiency of any insurance; (b) the solvency of any insurer; or (c) the payment of claims.

#### 6.11 CONDEMNATION AND INSURANCE PROCEEDS.

a. ASSIGNMENT OF CLAIMS. Trustor absolutely and irrevocably assigns to Beneficiary all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Beneficiary, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Beneficiary. Beneficiary may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Trustor may settle as provided herein), but shall not be responsible for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Beneficiary.

b. APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Beneficiary; (cc) a cost

breakdown for the work; (dd) if reasonably required by Beneficiary, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Beneficiary; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security. Trustor acknowledges that the specific conditions described above are reasonable.

- c. APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Beneficiary chooses.

#### 6.12 IMPOUNDS.

- a. POST-DEFAULT IMPOUNDS. If required by Beneficiary at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Trustor shall deposit with Beneficiary such amounts ("Post-Default Impounds") on such dates (determined by Beneficiary as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Beneficiary. Beneficiary in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Beneficiary not exceeding 1 year and shall determine the fractional portion thereof that Trustor shall deposit with Beneficiary on each date specified by Beneficiary during such period. If the Post-Default Impounds paid by Trustor are not sufficient to pay the related Costs, Trustor shall deposit with Beneficiary upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Trustor in addition to (but without duplication of) any other Impounds (as defined below).
- b. ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Beneficiary or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Beneficiary shall not be a trustee, special depository or other fiduciary for Trustor with respect to such account, and the existence of such account shall not limit Beneficiary's rights under this Deed of Trust, any other agreement or any provision of law. If no Default exists, Beneficiary shall apply all Impounds to the payment of the related Costs, or in Beneficiary's sole discretion may release any or all Impounds to Trustor for application to and payment of such Costs. If a Default exists, Beneficiary may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Trustor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Trustor hereunder shall not be diminished by deposits of Impounds made by Trustor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Deed of Trust, Beneficiary may assign all Impounds in its possession to Beneficiary's assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Beneficiary may elect, Beneficiary shall pay to Trustor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Trustor under Section 6.9, (ii) all insurance premiums payable by Trustor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Trustor shall deliver to Beneficiary, promptly upon receipt, all bills for Costs for which Beneficiary has required Post-Default Impounds.

- 6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee hereunder at Trustor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Trustor's or Beneficiary's rights. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.
- 6.14 RIGHT OF INSPECTION. Beneficiary and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Trustor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms of this Deed of Trust. Beneficiary shall use reasonable efforts to assure that Beneficiary's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Trustor or Trustor's tenants on the Property.
- 6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN TRUSTOR. Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Beneficiary or as otherwise expressly permitted in the Note, Trustor shall not: (a) cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business); or (b) cause or permit a Transfer of any direct or indirect interest in any partnership, limited liability company, corporation, trust, or other entity comprising all or any portion of or holding any direct or indirect interest in Trustor or Borrower (other than the sale or exchange of a limited partnership interest or a non-managing membership interest). If any Transfer not expressly permitted in the Note or this Deed of Trust is made without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Trustor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Beneficiary's consent to any Transfer may be withheld, conditioned or delayed in Beneficiary's sole and absolute discretion.
- 6.16 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE. Trustee accepts this trust when this Deed of Trust is recorded. From time to time and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Beneficiary, or Trustee at the direction of Beneficiary, may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) join with Trustor in granting any easement on the Property; (d) join with Trustor in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustor in any respect. Except as may otherwise be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability and expense.

- 6.17 COMPENSATION OF TRUSTEE. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of this trust, including, without limitation, reasonable attorneys' fees. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.18 EXCULPATION. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Beneficiary and no such liability shall be asserted or enforced against Beneficiary, all such liability being expressly waived and released by Trustor.
- 6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Deed of Trust, Trustor agrees to defend, indemnify and hold harmless Trustee and the Beneficiary Group (as defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Beneficiary Group; (b) this Deed of Trust; (c) the execution of this Deed of Trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Trustor to perform Trustor's obligations under this Deed of Trust or the other Loan Documents; (e) any alleged obligation or undertaking on the Beneficiary Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Trustor or any contractor, agent, employee or representative of Trustor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Trustor under Sections 5.1.p, 5.1.q, 5.1.r, or 6.2 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Beneficiary Group or Trustee, or any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group or Trustee arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Deed of Trust on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Deed of Trust, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Trustee or the Beneficiary Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Trustee or the Beneficiary Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Beneficiary Group", as used herein, shall mean (1) Beneficiary (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Beneficiary, (3) the directors, officers, employees and agents of Beneficiary and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Trustor shall pay immediately upon Trustee's or Beneficiary's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Trustor agrees to use legal counsel reasonably acceptable to Trustee and the Beneficiary Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND

RECONVEYANCE OF THIS DEED OF TRUST, BUT TRUSTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 6.20 SUBSTITUTION OF TRUSTEE. From time to time, by a writing signed and acknowledged by Beneficiary, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law and shall be recorded in the Office of the Recorder of the County in which the Property is situated. Beneficiary shall give such additional notice as may be required by law. Such instrument of substitution and the compliance with any other requirements of applicable law shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new trustee.
- 6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.
- 6.22 SALE OR PARTICIPATION OF LOAN. Trustor agrees that Beneficiary may at any time sell, assign, participate or securitize all or any portion of Beneficiary's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Beneficiary with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Trustor, any partner or member of Trustor, any constituent partner or member of Trustor, any guarantor and any nonborrower trustor). In the event of any such sale, assignment, participation or securitization, Beneficiary and the other parties to the same shall share in the rights and obligations of Beneficiary set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Trustor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Trustor to each purchaser, assignee or participant, and Trustor shall, within 15 days after request by Beneficiary, (x) deliver an estoppel certificate verifying for the benefit of Beneficiary and any other party designated by Beneficiary the status and the terms and provisions of the Loan in form and substance acceptable to Beneficiary, (y) provide any information, legal opinions or documents regarding Trustor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Beneficiary or Beneficiary's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Trustor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Trustor's rights or increasing Trustor's obligations. The indemnity obligations of Trustor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.
- 6.23 RECONVEYANCE. Upon Beneficiary's written request, and upon surrender of this Deed of Trust or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Trustee for cancellation, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed,

the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

- 6.24 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 6.25 COMMUNITY FACILITIES DISTRICT. Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any Community Facilities District formed pursuant to the Community Facilities District Act, A.R.S. Section 48-701, et seq., as amended from time to time. Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Community Facilities District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Property in a Community Facilities District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.
- 6.26 MANAGEMENT AGREEMENTS. Without the prior written consent of Beneficiary, Trustor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Trustor represents, warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Trustor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Trustor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Beneficiary or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary.

#### ARTICLE 7. DEFAULT

- 7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. OPTIONAL DEFAULT. An "Optional Default" shall occur, at Beneficiary's option, upon the occurrence of any of the following events:
- (i) MONETARY. Borrower or Trustor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.
  - (ii) FAILURE TO PERFORM. Borrower or Trustor shall fail to observe, perform or discharge any of Borrower's or Trustor's obligations, covenants, conditions or agreements, other than Borrower's or Trustor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Trustor, as the case may be, by Beneficiary or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Trustor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
  - (iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Trustor, or a guarantor, if

any, to Beneficiary or in connection with any of the Loan Documents, or as an inducement to Beneficiary to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

- (iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Beneficiary) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Trustor under any of the Loan Documents, or any material portion of the other assets of Borrower or Trustor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.
  - (v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Beneficiary) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Trustor promptly notifies Beneficiary of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Trustor delivers to Beneficiary immediately available funds in an amount sufficient, in Beneficiary's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of such funds and no Default occurs thereafter, Beneficiary shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Deed of Trust have been satisfied. Trustor acknowledges that the specific conditions described above are reasonable.
  - (vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Beneficiary and relied upon by Beneficiary in making the Loan, and which change Beneficiary reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Trustor to pay or perform Borrower's or Trustor's obligations in accordance with the terms of the Note, this Deed of Trust, and the other Loan Documents.
- b. AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:
- (i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.
  - (ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower

or in any way restrains or limits Borrower or Beneficiary regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Trustor, any general partner or managing member of Borrower or Trustor, or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Beneficiary may, at its option, declare all sums owing to Beneficiary under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Beneficiary under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Beneficiary shall have all of the following rights and remedies:

- a. ENTRY ON PROPERTY. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Beneficiary or Trustee deem necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Trustor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Beneficiary deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority hereto, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Beneficiary's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;
- b. APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Beneficiary's right to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Trustor, Borrower or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents;
- c. JUDICIAL FORECLOSURE; INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;



- d. NONJUDICIAL FORECLOSURE. To 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 the Trustee to exercise the power of sale granted herein. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, as directed by Beneficiary, or by Trustor 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. Except as required by law, neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary, may purchase at the sale.

Upon sale of the Property at any judicial or nonjudicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (viii) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (xi) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property;

- e. MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Beneficiary determines in its sole discretion;
- f. RIGHTS TO COLLATERAL. To exercise all rights Trustee or Beneficiary may have with respect to the Collateral under this Deed of Trust, the UCC or otherwise at law; and

- g. OTHER RIGHTS. To exercise such other rights as Trustee or Beneficiary may have at law or in equity or pursuant to the terms and conditions of this Deed of Trust or any of the other Loan Documents.

In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. If any foreclosure sale is effected, except as otherwise may be required by applicable law, Trustee shall apply the proceeds of such sale in the following order of priority: First, to the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and reasonable attorneys' fees actually incurred; Second, to the payment of the contract or contracts secured; Third, to the payment of all other Secured Obligations; Fourth, to junior lienholders or encumbrancers in order of their priority; and Fifth, the remainder, if any, to the person or persons legally entitled thereto.
- 7.5 WAIVER OF MARSHALING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Trustor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and upon demand all costs and expenses incurred by Trustee and Beneficiary in the enforcement of the terms and conditions of this Deed of Trust (including, without limitation, statutory trustee's fees, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Trustor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (b) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 7.9 REMEDIES CUMULATIVE. All rights and remedies of Beneficiary and Trustee under this Deed of Trust and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Deed of Trust as though it were a mortgage). Beneficiary may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."
- 8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Beneficiary or Trustee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Beneficiary's or Trustee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Beneficiary or Trustee in exercising any such right or remedy shall be construed to preclude Beneficiary or Trustee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Trustor shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances.
- 8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Beneficiary's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Beneficiary unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Deed of Trust or any of the other Loan Documents, such costs or expenses shall be reasonable.
- 8.4 PERMITTED CONTESTS. After prior written notice to Beneficiary, Trustor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Trustor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Trustor pursues the contest diligently, in a manner which Beneficiary determines is not prejudicial to Beneficiary, and does not impair the lien of this Deed of Trust; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Beneficiary shall not be in any danger of any civil or criminal liability; and (d) if required by Beneficiary, Trustor deposits with Beneficiary any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Beneficiary to protect Beneficiary from the consequences of the contest being unsuccessful. Trustor's right to contest pursuant to the terms of this provision shall in no way relieve Trustor or Borrower of its obligations under the Loan or to make payments to Beneficiary as and when due.
- 8.5 FURTHER ASSURANCES. Trustor shall, upon demand by Beneficiary or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Trustor and Beneficiary regarding their respective rights and obligations under this Deed of Trust or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses,

reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). Court costs and attorneys' fees shall be set by the court and not by a jury. As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 TRUSTOR AND BENEFICIARY DEFINED. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and any future owner or holder, including assignees, pledgees and participants, of the Note or any interest therein.

8.8 DISCLAIMERS.

a. RELATIONSHIP. The relationship of Trustor and Beneficiary under this Deed of Trust and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the other Loan Documents: (i) Beneficiary is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Trustor, and Beneficiary does not intend to ever assume such status; (ii) Beneficiary's activities in connection with this Deed of Trust and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Beneficiary does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Beneficiary shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor.

b. NO LIABILITY. Beneficiary shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor or any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

8.9 SEVERABILITY. If any term of this Deed of Trust or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the mortgagor and Beneficiary being the mortgagee.

8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Beneficiary under the deed of trust established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the deed of trust with any security interest created by the security agreement. Beneficiary may elect to exercise or enforce any of its rights, remedies or interests under either or both the deed of trust or the security agreement as Beneficiary may from time to time deem

appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the deed of trust and the security agreement.

- 8.11 MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 8.12 OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Deed of Trust as a "Trustor" agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.
- 8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions contained herein and in the other Loan Documents herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Trustor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17 GOVERNING LAW. This Deed of Trust was accepted by Beneficiary in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Deed of Trust, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 enforcement of Beneficiary's STATUTORY POWER OF SALE and all other remedies granted hereunder and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Deed of Trust, the Note and other Loan Documents.
- 8.18 CONSENT TO JURISDICTION. Trustor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Trustor against Beneficiary, arising out of or relating to this Deed of Trust, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Trustor's principal place of business is located over any suit, action or proceeding, brought by Beneficiary against Trustor, arising out of or relating to this Deed of Trust, the Note or the Loan; and (c) any state court sitting in the county of the state where the

Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral. Trustor irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.19 EXHIBITS. Exhibit A is incorporated into this Deed of Trust by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All notices and other communications that are required or permitted to be given to a party under this Deed of Trust or the other Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Deed of Trust and the facsimile numbers for the parties are as follows:

Beneficiary:

WELLS FARGO BANK, N.A.  
FAX No.: (925) 691-5947

Trustee:

TRANSNATION TITLE INSURANCE COMPANY  
FAX No.: (602) 247-2694

Trustor:

MHC STAGECOACH, L.L.C.  
FAX No.: (312) 279-1715

Trustor's principal place of business is at the address set forth on page 1 of this Deed of Trust. A copy of any notice to Trustor shall be sent as follows:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Trustor whose address is set forth on page 1 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. BENEFICIARY (BY ITS ACCEPTANCE HEREOF) AND TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER

ORAL OR WRITTEN) OR ACTIONS OF BENEFICIARY OR TRUSTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER INTO THIS DEED OF TRUST.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

(ALL SIGNATURES MUST BE ACKNOWLEDGED)



STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK            )

The foregoing instrument was acknowledged before me this 8/1, 2001 by John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company, on behalf of the corporation.

WITNESS my hand and official seal.

/s/ Mary Dobronski

-----  
Print Name: Mary Dobronski

My Commission Expires:

11/3/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any:\_\_\_\_\_

## EXHIBIT A

## Description Of Land

Exhibit A to DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Trustor", TRANSNATION TITLE INSURANCE COMPANY, as "Trustee", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Beneficiary".

Description of Land. The Land referred to in this Deed of Trust is situated in the county of Maricopa, state of Arizona and is described as follows:

That portion of the Southwest quarter of Section 21, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 21;  
 THENCE North 00(Degree) 34' 15" East (assumed bearing) along the West line of said Section 21, a distance of 786.55 feet;  
 THENCE South 89(Degree) 25' 45" East 65.00 feet to the POINT OF BEGINNING;  
 THENCE continuing South 89(Degree) 25' 45" East 126.95 feet;  
 THENCE North 87(Degree) 23' 37" East 116.40 feet;  
 THENCE South 00(Degree) 30' 51" West 124.13 feet to the Northeast corner of the property described in Docket 10568, page 613, records of Maricopa County, Arizona;  
 THENCE South 00(Degree) 34' 44" West along the East line of said property 156.09 feet to a point on a line 500.00 feet North and parallel to the South line of said Section 21;  
 THENCE North 88(Degree) 16' 15" East along said line 530.61 feet to the Northeast corner of the property described in Docket 6785, page 268, records of Maricopa County, Arizona;  
 THENCE South 00(Degree) 27' 31" West 435.31 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;  
 THENCE North 88(Degree) 16' 15" East along said line 51.93 feet;  
 THENCE North 00(Degree) 20' 35" East 127.50 feet;  
 THENCE North 02(Degree) 21' 45" West 308.14 feet;  
 THENCE North 88(Degree) 15' 20" East 445.27 feet;  
 THENCE North 21(Degree) 52' 10" East 195.00 feet;  
 THENCE South 89(Degree) 39' 20" East 285.57 feet to a point on the West line of the East 60 acres of the Southwest quarter of said Section 21;  
 THENCE North 00(Degree) 20' 40" East along said West line 807.45 feet to a point on the Southerly line of the property described in Docket 15563, page 420, records of Maricopa County, Arizona;  
 THENCE South 86(Degree) 58' 05" West along said South line and the South line of the property described in Docket 15133, page 167, records of Maricopa County, Arizona, 1,366.81 feet to a point 309.53 feet East of the West line of said Section 21;  
 THENCE South 00(Degree) 37' 00" West 616.40 feet (620.95 feet, record) to the North line of the property described in Docket 6099, page 277, records of Maricopa County, Arizona;  
 THENCE North 89(Degree) 25' 45" West along said North line 243.43 feet to a point on a line 65.00 feet East of and parallel to the West line of said Section 21;  
 THENCE South 00(Degree) 34' 15" West along said line 55.48 feet to the POINT OF BEGINNING;

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
 THENCE North 88(Degree) 16' 15" East (an assumed bearing) along the South line of said Section 21, a distance of 840.11 feet;

EXHIBIT A

THENCE North 00(Degree) 27' 31" East 65.05 feet to the POINT OF BEGINNING;  
THENCE continuing North 00(Degree) 27' 31" East along the East line of the  
property described in Docket 6785, page 259, records of Maricopa County,  
Arizona, 435.31 feet;  
THENCE North 87(Degree) 25' 34" East 36.52 feet;  
THENCE South 02(Degree) 21' 45" East 308.14 feet;  
THENCE South 00(Degree) 20' 35" West 127.50 feet to a point on a line 65.00 feet  
North of and parallel to the South line of said Section 21;  
THENCE South 88(Degree) 16' 15" West along said line 51.93 feet to the POINT OF  
BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
THENCE North 88(Degree) 08' 29" East (North 88(Degree) 16' 15" East, record)  
along the South line of said Section 21, a distance of 1,684.02 feet to the West  
line of the East 60 acres of the Southwest quarter of said Section 21;  
THENCE North 00(Degree) 06' 45" East 669.32 feet ( North 00(Degree) 20' 40" East  
669.45, record) along said West line to the POINT OF BEGINNING;  
THENCE North 89(Degree) 47' 06" West (North 89(Degree) 39' 20" West, record)  
115.00 feet;  
THENCE North 16(Degree) 08' 00" East 325.00 feet;  
THENCE North 52(Degree) 29' 10" East 31.95 feet to the West line of the East 60  
acres of the Southwest quarter of said Section 21;  
THENCE South 00(Degree) 06' 45" West (South 00(Degree) 20' 40" West, record)  
along said West line 332.09 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;  
THENCE North 88(Degree) 16' 15" East along the South line of said Section 21, a  
distance of 892.17 feet;  
THENCE North 00(Degree) 20' 35" East 65.04 feet to a point on a line parallel to  
and 65.00 feet North of the South line of said Section 21;  
THENCE continuing North 00(Degree) 20' 35" East 127.50 feet;  
THENCE North 02(Degree) 21' 45" West 308.14 feet;  
THENCE North 88(Degree) 15' 20" East 445.27 feet;  
THENCE North 21(Degree) 52' 10" East 195.00 feet;  
THENCE South 89(Degree) 39' 20" East 21.00 feet to the POINT OF BEGINNING;  
THENCE continuing South 89(Degree) 39' 20" East 55.00 feet;  
THENCE North 00(Degree) 20' 40" East 40.00 feet;  
THENCE North 89(Degree) 39' 20" West 55.00 feet;  
THENCE South 00(Degree) 20' 40" West 40.00 feet to the POINT OF BEGINNING.

EXHIBIT A

Recording Requested by  
and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC # A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No. : 31-0900553R  
Property Name: Casa del Sol III

DEED OF TRUST  
and  
ABSOLUTE ASSIGNMENT OF RENTS AND LEASES  
and  
SECURITY AGREEMENT  
(AND FIXTURE FILING)

The parties to this DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of July 31, 2001 are MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Trustor"), with a mailing address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, TRANSNATION TITLE INSURANCE COMPANY, an Arizona corporation ("Trustee"), with a mailing address at 234 N. Central Avenue, Phoenix, Arizona, 85004 and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"), with a mailing address at 1320 Willow Pass Road, Suite 205, Concord, California 94520.

RECITALS

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Beneficiary, and Beneficiary proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Deed of Trust, payable to the order of Beneficiary in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Deed of Trust, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. DEED OF TRUST

- 1.1 GRANT. For the purposes of and upon the terms and conditions of this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may hereafter acquire in, to, under or derived from any or all of the following:

- a. That real property ("Land") located in Peoria, county of Maricopa, state of Arizona, and more particularly described on Exhibit A attached hereto;
- b. All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;
- c. All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
- d. All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;
- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Trustor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

#### ARTICLE 2. OBLIGATIONS SECURED

- 2.1 OBLIGATIONS SECURED. Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- a. Full and punctual payment to Beneficiary of all sums at any time owing under the Note;
  - b. Payment and performance of all covenants and obligations of Trustor under this Deed of Trust, including, without limitation, indemnification obligations and advances made to protect the Property;
  - c. Payment and performance of all additional covenants and obligations of Borrower and Trustor under the Loan Documents;
  - d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Deed of Trust recites are secured hereby;
  - e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust;

- f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and
- g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation:
  - (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Trustor irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Beneficiary confers upon Trustor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Beneficiary, to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation or any other obligation of Borrower, Trustor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Beneficiary shall re-confer the License upon Trustor until the occurrence of another Default.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Beneficiary any duty to produce rents or profits. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (e) the exercise of or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (f) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 COVENANTS.

a. ALL LEASES. Trustor shall, at Trustor's sole cost and expense:

- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
- (ii) use reasonable efforts to keep the Property leased at all times to tenants whom Trustor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
- (iii) promptly upon Beneficiary's request, deliver to Beneficiary a copy of each requested Lease and all amendments thereto and waivers thereof; and
- (iv) promptly upon Beneficiary's request, execute and record any additional assignments of landlord's interest under any Lease to Beneficiary and specific subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Beneficiary.

Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;
- (vii) except upon Beneficiary's request, execute any assignment of landlord's interest in any Lease; or
- (viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Trustor shall deposit with Beneficiary any sums received by Trustor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Trustor shall be held in trust by Trustor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Trustor with respect to any Lease which is less than \$50,000 shall be payable to Trustor. All such sums received by Beneficiary with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12b) and shall be deposited by Beneficiary into a pledged account in accordance with Section 6.12b. If no Default exists, Beneficiary shall release such Impounds to Trustor from time to time

as necessary to pay or reimburse Trustor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Beneficiary shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Trustor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Trustor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Beneficiary may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Beneficiary shall release any remaining such Impounds relating to the affected space to Trustor. Trustor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

b. MAJOR LEASES. Trustor shall, at Trustor's sole cost and expense, give Beneficiary prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Beneficiary; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Beneficiary. Trustor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4a as well as by the provisions of this Section.

c. FAILURE TO DENY REQUEST. Beneficiary's failure to deny any written request by Trustor for Beneficiary's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Beneficiary's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Beneficiary's consent to such request.

3.5 RIGHT OF SUBORDINATION. Beneficiary may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Deed of Trust to any Lease.



#### ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Trustor grants and assigns to Beneficiary a security interest to secure payment and performance of all of the Secured Obligations, in all of Trustor's right, title and interest in and to the following described personal property in which Trustor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Trustor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Arizona Uniform Commercial Code, as amended or recodified from time to time ("UCC").

4.2 COVENANTS. Trustor agrees: (a) to execute and deliver such documents as Beneficiary reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Beneficiary at least 30 days' prior written notice thereof; and (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Beneficiary's rights hereunder.

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF BENEFICIARY UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

- a. DISPOSITION OF COLLATERAL. Beneficiary may: (i) upon written notice, require Trustor to assemble the Collateral and make it available to Beneficiary at a place reasonably designated by Beneficiary; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and
- b. OTHER RIGHTS. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Beneficiary reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Beneficiary may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of the Collateral.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Beneficiary shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Beneficiary first to the reasonable expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Beneficiary may from time to time elect.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Trustor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants to Beneficiary that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. LEGAL STATUS. Trustor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Trustor and Borrower are organized. Trustor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. PERMITS. Trustor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged in compliance with applicable law.

- c. AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity .
- d. VIOLATIONS. The execution, delivery and performance by Trustor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor or Borrower is a party or by which Trustor or Borrower is bound.
- e. LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Trustor or Borrower other than those previously disclosed in writing by Trustor or Borrower to Beneficiary.
- f. FINANCIAL STATEMENTS. The financial statements of Trustor and Borrower, of each general partner (if Trustor or Borrower is a partnership), of each member (if Trustor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Trustor or Borrower to Beneficiary: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan, or other accounting standards approved by Beneficiary. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Trustor or Borrower to Beneficiary and approved in writing by Beneficiary.
- g. REPORTS. All reports, documents, instruments and information delivered to Beneficiary in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Beneficiary accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. INCOME TAXES. There are no material pending assessments or adjustments of Trustor's or Borrower's income tax payable with respect to any year.
- i. SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. TITLE. Trustor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Deed of Trust is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Beneficiary and shown in the title insurance policy insuring the lien of this Deed of Trust; and (iii) other matters, if any, previously disclosed to Beneficiary by Trustor in a writing specifically referring to this representation and warranty.
- k. MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust, other than those (if any) previously approved by Beneficiary and shown on the title insurance policy insuring the lien of this Deed of Trust.

- l. ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Beneficiary, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.
- n. COLLATERAL. Trustor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Beneficiary by Trustor in writing specifically referring to this representation and warranty. Trustor's chief executive office (or residence, if applicable) is located at the address shown on page one of this Deed of Trust. Trustor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Trustor delivered to Beneficiary are complete and accurate in every respect. Trustor's legal name is exactly as shown on page one of this Deed of Trust.
- o. CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Beneficiary, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.
- p. HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Trustor to Beneficiary.
- q. HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.
- r. HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).
- s. WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Trustor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

- v. CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.
- w. HOMESTEAD. There is no homestead or other exemption available to Trustor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose this Deed of Trust.
- x. SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Trustor, and Trustor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Trustor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Trustor is able to pay its debts as they become due.
- y. SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Trustor hereby represents, warrants and covenants to Beneficiary that with respect to both Trustor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Trustor:

- a. each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- b. each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- c. each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;
- d. each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;
- e. if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;
- f. if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;
- g. each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

- h. each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured trade debt not to exceed \$1,000,000 in the aggregate with respect to Trustor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Trustor, as applicable) and is paid within thirty (30) days from the date incurred;
- i. each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- j. each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- k. each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- l. each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- m. each such entity has conducted and will conduct its business in its own name or in a registered trade name;
- n. each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- o. each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- p. each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- q. each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- r. each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- s. each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;
- t. each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;
- u. each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;
- v. each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;

- w. each such entity has not made and will not make loans to any person or entity;
- x. each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;
- y. each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;
- z. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- aa. each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- bb. each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- cc. if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;
- dd. if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;
- ee. each such entity will, as a condition to the closing of the Loan, deliver to Beneficiary a nonconsolidation opinion in form and substance acceptable to Beneficiary;
- ff. if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and
- gg. if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Trustor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Beneficiary is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Beneficiary a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Beneficiary or Trustee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Deed of Trust and perform Trustor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Trustor shall not, without Beneficiary's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Deed of Trust, Trustor agrees as follows:

a. PROHIBITED ACTIVITIES. Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Trustor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

b. HAZARDOUS MATERIALS LAWS. Trustor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous



Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

- c. NOTICES. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened in writing against Trustor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.
- d. REMEDIAL ACTION. In response to knowledge or notification to Trustor of the presence of any Hazardous Materials on, under or about the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- e. INSPECTION BY BENEFICIARY. Upon reasonable prior notice to Trustor (except in the case of an emergency) and during normal business hours, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- f. LEGAL EFFECT OF SECTION. Trustor and Beneficiary agree that: (i) this Hazardous Materials Section is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

6.3 COMPLIANCE WITH LAWS. Trustor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Trustor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged.

6.4 LITIGATION. Trustor shall promptly notify Beneficiary in writing of any litigation pending or threatened in writing against Trustor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened (in writing)

litigation against Trustor or Borrower if the aggregate damage claims against Trustor or Borrower exceed \$500,000.

- 6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Trustor shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Trustor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6 ACCOUNTING RECORDS. Trustor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan or other accounting standards approved by Beneficiary. Trustor shall permit and shall cause Borrower to permit any representative of Beneficiary, at any reasonable time and from time to time, upon reasonable prior notice to Trustor, to inspect, audit and examine such books and records and make copies of same.
- 6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor shall pay to Beneficiary the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Beneficiary's in-house or outside counsel, incurred by Beneficiary in connection with: (a) appraisals and inspections of the Property or Collateral required by Beneficiary as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Beneficiary at Trustor's request or wholly or partially for the benefit of Trustor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Trustor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Beneficiary may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Beneficiary together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Trustor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Trustor's right to contest such matters under this Deed of Trust or as expressly permitted in the Loan Documents, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Trustor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Beneficiary for eventual payment thereof in the event that Trustor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).
- 6.9 TAXES AND OTHER LIABILITIES. Trustor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Trustor shall promptly provide to Beneficiary copies of all tax and assessment notices pertaining to the Property. Trustor hereby authorizes Beneficiary to obtain, at Trustor's

expense, a tax service contract which shall provide tax information on the Property to Beneficiary for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Trustor shall insure the Property against loss or damage by fire and such other hazards as Beneficiary shall from time to time require; provided, however, Beneficiary, at Beneficiary's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and Beneficiary, at Beneficiary's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Trustor shall also carry public liability insurance and such other insurance as Beneficiary may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Beneficiary and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Trustor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Trustor to Beneficiary under any of the Loan Documents remain outstanding at Trustor's expense, with companies, and in substance and form satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance shall incur any liability for: (a) the existence, nonexistence, form or legal sufficiency of any insurance; (b) the solvency of any insurer; or (c) the payment of claims.

#### 6.11 CONDEMNATION AND INSURANCE PROCEEDS.

a. ASSIGNMENT OF CLAIMS. Trustor absolutely and irrevocably assigns to Beneficiary all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Beneficiary, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Beneficiary. Beneficiary may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Trustor may settle as provided herein), but shall not be responsible for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Beneficiary.

b. APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Beneficiary; (cc) a cost

breakdown for the work; (dd) if reasonably required by Beneficiary, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Beneficiary; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security. Trustor acknowledges that the specific conditions described above are reasonable.

- c. APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Beneficiary chooses.

#### 6.12 IMPOUNDS.

- a. POST-DEFAULT IMPOUNDS. If required by Beneficiary at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Trustor shall deposit with Beneficiary such amounts ("Post-Default Impounds") on such dates (determined by Beneficiary as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Beneficiary. Beneficiary in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Beneficiary not exceeding 1 year and shall determine the fractional portion thereof that Trustor shall deposit with Beneficiary on each date specified by Beneficiary during such period. If the Post-Default Impounds paid by Trustor are not sufficient to pay the related Costs, Trustor shall deposit with Beneficiary upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Trustor in addition to (but without duplication of) any other Impounds (as defined below).
- b. ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Beneficiary or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Beneficiary shall not be a trustee, special depository or other fiduciary for Trustor with respect to such account, and the existence of such account shall not limit Beneficiary's rights under this Deed of Trust, any other agreement or any provision of law. If no Default exists, Beneficiary shall apply all Impounds to the payment of the related Costs, or in Beneficiary's sole discretion may release any or all Impounds to Trustor for application to and payment of such Costs. If a Default exists, Beneficiary may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Trustor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Trustor hereunder shall not be diminished by deposits of Impounds made by Trustor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Deed of Trust, Beneficiary may assign all Impounds in its possession to Beneficiary's assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Beneficiary may elect, Beneficiary shall pay to Trustor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Trustor under Section 6.9, (ii) all insurance premiums payable by Trustor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Trustor shall deliver to Beneficiary, promptly upon receipt, all bills for Costs for which Beneficiary has required Post-Default Impounds.

- 6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee hereunder at Trustor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Trustor's or Beneficiary's rights. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.
- 6.14 RIGHT OF INSPECTION. Beneficiary and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Trustor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms of this Deed of Trust. Beneficiary shall use reasonable efforts to assure that Beneficiary's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Trustor or Trustor's tenants on the Property.
- 6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN TRUSTOR. Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Beneficiary or as otherwise expressly permitted in the Note, Trustor shall not: (a) cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business); or (b) cause or permit a Transfer of any direct or indirect interest in any partnership, limited liability company, corporation, trust, or other entity comprising all or any portion of or holding any direct or indirect interest in Trustor or Borrower (other than the sale or exchange of a limited partnership interest or a non-managing membership interest). If any Transfer not expressly permitted in the Note or this Deed of Trust is made without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Trustor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Beneficiary's consent to any Transfer may be withheld, conditioned or delayed in Beneficiary's sole and absolute discretion.
- 6.16 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE. Trustee accepts this trust when this Deed of Trust is recorded. From time to time and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Beneficiary, or Trustee at the direction of Beneficiary, may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) join with Trustor in granting any easement on the Property; (d) join with Trustor in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustor in any respect. Except as may otherwise be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability and expense.

- 6.17 COMPENSATION OF TRUSTEE. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of this trust, including, without limitation, reasonable attorneys' fees. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.18 EXCULPATION. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Beneficiary and no such liability shall be asserted or enforced against Beneficiary, all such liability being expressly waived and released by Trustor.
- 6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Deed of Trust, Trustor agrees to defend, indemnify and hold harmless Trustee and the Beneficiary Group (as defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Beneficiary Group; (b) this Deed of Trust; (c) the execution of this Deed of Trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Trustor to perform Trustor's obligations under this Deed of Trust or the other Loan Documents; (e) any alleged obligation or undertaking on the Beneficiary Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Trustor or any contractor, agent, employee or representative of Trustor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Trustor under Sections 5.1.p, 5.1.q, 5.1.r, or 6.2 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Beneficiary Group or Trustee, or any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group or Trustee arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Deed of Trust on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Deed of Trust, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Trustee or the Beneficiary Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Trustee or the Beneficiary Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Beneficiary Group", as used herein, shall mean (1) Beneficiary (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Beneficiary, (3) the directors, officers, employees and agents of Beneficiary and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Trustor shall pay immediately upon Trustee's or Beneficiary's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Trustor agrees to use legal counsel reasonably acceptable to Trustee and the Beneficiary Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND

RECONVEYANCE OF THIS DEED OF TRUST, BUT TRUSTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 6.20 SUBSTITUTION OF TRUSTEE. From time to time, by a writing signed and acknowledged by Beneficiary, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law and shall be recorded in the Office of the Recorder of the County in which the Property is situated. Beneficiary shall give such additional notice as may be required by law. Such instrument of substitution and the compliance with any other requirements of applicable law shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new trustee.
- 6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.
- 6.22 SALE OR PARTICIPATION OF LOAN. Trustor agrees that Beneficiary may at any time sell, assign, participate or securitize all or any portion of Beneficiary's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Beneficiary with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Trustor, any partner or member of Trustor, any constituent partner or member of Trustor, any guarantor and any nonborrower trustor). In the event of any such sale, assignment, participation or securitization, Beneficiary and the other parties to the same shall share in the rights and obligations of Beneficiary set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Trustor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Trustor to each purchaser, assignee or participant, and Trustor shall, within 15 days after request by Beneficiary, (x) deliver an estoppel certificate verifying for the benefit of Beneficiary and any other party designated by Beneficiary the status and the terms and provisions of the Loan in form and substance acceptable to Beneficiary, (y) provide any information, legal opinions or documents regarding Trustor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Beneficiary or Beneficiary's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Trustor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Trustor's rights or increasing Trustor's obligations. The indemnity obligations of Trustor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.
- 6.23 RECONVEYANCE. Upon Beneficiary's written request, and upon surrender of this Deed of Trust or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Trustee for cancellation, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed,

the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

- 6.24 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 6.25 COMMUNITY FACILITIES DISTRICT. Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any Community Facilities District formed pursuant to the Community Facilities District Act, A.R.S. Section 48-701, et seq., as amended from time to time. Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Community Facilities District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Property in a Community Facilities District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.
- 6.26 MANAGEMENT AGREEMENTS. Without the prior written consent of Beneficiary, Trustor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Trustor represents, warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Trustor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Trustor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Beneficiary or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary.

#### ARTICLE 7. DEFAULT

- 7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. OPTIONAL DEFAULT. An "Optional Default" shall occur, at Beneficiary's option, upon the occurrence of any of the following events:
- (i) MONETARY. Borrower or Trustor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.
  - (ii) FAILURE TO PERFORM. Borrower or Trustor shall fail to observe, perform or discharge any of Borrower's or Trustor's obligations, covenants, conditions or agreements, other than Borrower's or Trustor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Trustor, as the case may be, by Beneficiary or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Trustor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
  - (iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Trustor, or a guarantor, if



any, to Beneficiary or in connection with any of the Loan Documents, or as an inducement to Beneficiary to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

- (iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Beneficiary) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Trustor under any of the Loan Documents, or any material portion of the other assets of Borrower or Trustor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.
  - (v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Beneficiary) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Trustor promptly notifies Beneficiary of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Trustor delivers to Beneficiary immediately available funds in an amount sufficient, in Beneficiary's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of such funds and no Default occurs thereafter, Beneficiary shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Deed of Trust have been satisfied. Trustor acknowledges that the specific conditions described above are reasonable.
  - (vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Beneficiary and relied upon by Beneficiary in making the Loan, and which change Beneficiary reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Trustor to pay or perform Borrower's or Trustor's obligations in accordance with the terms of the Note, this Deed of Trust, and the other Loan Documents.
- b. AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:
- (i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.
  - (ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower

or in any way restrains or limits Borrower or Beneficiary regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Trustor, any general partner or managing member of Borrower or Trustor, or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Beneficiary may, at its option, declare all sums owing to Beneficiary under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Beneficiary under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Beneficiary shall have all of the following rights and remedies:

- a. ENTRY ON PROPERTY. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Beneficiary or Trustee deem necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Trustor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Beneficiary deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority hereto, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Beneficiary's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;
- b. APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Beneficiary's right to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Trustor, Borrower or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents;
- c. JUDICIAL FORECLOSURE; INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

- d. NONJUDICIAL FORECLOSURE. To 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 the Trustee to exercise the power of sale granted herein. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, as directed by Beneficiary, or by Trustor 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. Except as required by law, neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary, may purchase at the sale.

Upon sale of the Property at any judicial or nonjudicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (viii) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (xi) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property;

- e. MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Beneficiary determines in its sole discretion;
- f. RIGHTS TO COLLATERAL. To exercise all rights Trustee or Beneficiary may have with respect to the Collateral under this Deed of Trust, the UCC or otherwise at law; and

- g. OTHER RIGHTS. To exercise such other rights as Trustee or Beneficiary may have at law or in equity or pursuant to the terms and conditions of this Deed of Trust or any of the other Loan Documents.

In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. If any foreclosure sale is effected, except as otherwise may be required by applicable law, Trustee shall apply the proceeds of such sale in the following order of priority: First, to the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and reasonable attorneys' fees actually incurred; Second, to the payment of the contract or contracts secured; Third, to the payment of all other Secured Obligations; Fourth, to junior lienholders or encumbrancers in order of their priority; and Fifth, the remainder, if any, to the person or persons legally entitled thereto.
- 7.5 WAIVER OF MARSHALING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Trustor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and upon demand all costs and expenses incurred by Trustee and Beneficiary in the enforcement of the terms and conditions of this Deed of Trust (including, without limitation, statutory trustee's fees, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Trustor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (b) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 7.9 REMEDIES CUMULATIVE. All rights and remedies of Beneficiary and Trustee under this Deed of Trust and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Deed of Trust as though it were a mortgage). Beneficiary may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."
- 8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Beneficiary or Trustee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Beneficiary's or Trustee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Beneficiary or Trustee in exercising any such right or remedy shall be construed to preclude Beneficiary or Trustee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Trustor shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances.
- 8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Beneficiary's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Beneficiary unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Deed of Trust or any of the other Loan Documents, such costs or expenses shall be reasonable.
- 8.4 PERMITTED CONTESTS. After prior written notice to Beneficiary, Trustor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Trustor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Trustor pursues the contest diligently, in a manner which Beneficiary determines is not prejudicial to Beneficiary, and does not impair the lien of this Deed of Trust; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Beneficiary shall not be in any danger of any civil or criminal liability; and (d) if required by Beneficiary, Trustor deposits with Beneficiary any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Beneficiary to protect Beneficiary from the consequences of the contest being unsuccessful. Trustor's right to contest pursuant to the terms of this provision shall in no way relieve Trustor or Borrower of its obligations under the Loan or to make payments to Beneficiary as and when due.
- 8.5 FURTHER ASSURANCES. Trustor shall, upon demand by Beneficiary or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Trustor and Beneficiary regarding their respective rights and obligations under this Deed of Trust or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses,

reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). Court costs and attorneys' fees shall be set by the court and not by a jury. As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 TRUSTOR AND BENEFICIARY DEFINED. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and any future owner or holder, including assignees, pledgees and participants, of the Note or any interest therein.

8.8 DISCLAIMERS.

a. RELATIONSHIP. The relationship of Trustor and Beneficiary under this Deed of Trust and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the other Loan Documents: (i) Beneficiary is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Trustor, and Beneficiary does not intend to ever assume such status; (ii) Beneficiary's activities in connection with this Deed of Trust and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Beneficiary does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Beneficiary shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor.

b. NO LIABILITY. Beneficiary shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor or any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

8.9 SEVERABILITY. If any term of this Deed of Trust or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the mortgagor and Beneficiary being the mortgagee.

8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Beneficiary under the deed of trust established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the deed of trust with any security interest created by the security agreement. Beneficiary may elect to exercise or enforce any of its rights, remedies or interests under either or both the deed of trust or the security agreement as Beneficiary may from time to time deem

appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the deed of trust and the security agreement.

- 8.11 MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 8.12 OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Deed of Trust as a "Trustor" agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.
- 8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions contained herein and in the other Loan Documents herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Trustor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17 GOVERNING LAW. This Deed of Trust was accepted by Beneficiary in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Deed of Trust, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 enforcement of Beneficiary's STATUTORY POWER OF SALE and all other remedies granted hereunder and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Deed of Trust, the Note and other Loan Documents.
- 8.18 CONSENT TO JURISDICTION. Trustor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Trustor against Beneficiary, arising out of or relating to this Deed of Trust, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Trustor's principal place of business is located over any suit, action or proceeding, brought by Beneficiary against Trustor, arising out of or relating to this Deed of Trust, the Note or the Loan; and (c) any state court sitting in the county of the state where the

Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral. Trustor irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.19 EXHIBITS. Exhibit A is incorporated into this Deed of Trust by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All notices and other communications that are required or permitted to be given to a party under this Deed of Trust or the other Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Deed of Trust and the facsimile numbers for the parties are as follows:

Beneficiary:

WELLS FARGO BANK, N.A.  
FAX No.: (925) 691-5947

Trustee:

TRANSNATION TITLE INSURANCE COMPANY  
FAX No.: (602) 247-2694

Trustor:

MHC STAGECOACH, L.L.C.  
FAX No.: (312) 279-1715

Trustor's principal place of business is at the address set forth on page 1 of this Deed of Trust. A copy of any notice to Trustor shall be sent as follows:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Trustor whose address is set forth on page 1 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. BENEFICIARY (BY ITS ACCEPTANCE HEREOF) AND TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER



ORAL OR WRITTEN) OR ACTIONS OF BENEFICIARY OR TRUSTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER INTO THIS DEED OF TRUST.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK                )

The foregoing instrument was acknowledged before me this 8/1, 2001 by John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company, on behalf of the corporation.

WITNESS my hand and official seal.

/s/ Mary Dobronski  
-----  
Print Name: Mary Dobronski

My Commission Expires:

11/3/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any:\_\_\_\_\_

EXHIBIT A

DESCRIPTION OF LAND

Exhibit A to DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Trustor", TRANSNATION TITLE INSURANCE COMPANY, as "Trustee", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Beneficiary".

Description of Land. The Land referred to in this Deed of Trust is situated in the county of Maricopa, state of Arizona and is described as follows:

PARCEL NO. 1:

That part of Lot 3, A Subdivision of the East half of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, according to Book 11 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 24;  
THENCE West along the South line of said Section 24, a distance of 1,320.54 feet;  
THENCE North 01(Degree) 38' 30" East 55.02 feet to a point on a line that is 55.00 feet North of and parallel to said South line said line being the North line of Peoria Avenue and the TRUE POINT OF BEGINNING;  
THENCE West along said North line 627.98 feet;  
THENCE North 45(Degree) 44' 20" East 28.64 feet;  
THENCE North 01(Degree) 28' 40" East 307.70 feet;  
THENCE North 45(Degree) 00' 00" East 149.61 feet;  
THENCE North 32(Degree) 31' 59" West 76.22 feet;  
THENCE North 01(Degree) 38' 30" East 420.00 feet;  
THENCE North 89(Degree) 57' 50" East 11.71 feet;  
THENCE North 01(Degree) 38' 30" East 133.00 feet to a point on a non-tangent curve concave to the East the center of which bears North 80(Degree) 00' 01" East having a radius of 1,430.40 feet and an interior angle of 23(Degree) 03' 59";  
THENCE Northeasterly along said curve 575.86 feet;  
THENCE North 01(Degree) 38' 30" East 84.00 feet;  
THENCE North 89(Degree) 57' 50" East 738.38 feet;  
THENCE South 01(Degree) 38' 30" West 1,407.21 feet;  
THENCE West 200.00 feet;  
THENCE South 01(Degree) 38' 30" West 300.11 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A perpetual easement for the installation and maintenance of private utility lines and drainage, as created in instrument recorded in Docket 12335, page 1213, records of Maricopa County, Arizona, being 12.00 feet in width, being 6.00 feet on each side of the centerlines described as follows:

BEGINNING at the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;  
THENCE West 1,326.54 feet along the South line of said Section 24;  
THENCE North 01(Degree) 38' 30" East 55.00 feet to the TRUE POINT OF BEGINNING;  
THENCE North 01(Degree) 38' 30" East 306.11 feet;

EXHIBIT A

THENCE East 206.00 feet to the point of termination; and

BEGINNING at a point which bears North 01(Degree) 38' 30" East 1,757.00 feet and South 89(Degree) 57' 50" West 1,120.55 feet from the Southeast corner of said Section 24;

THENCE South 89(Degree) 57' 50" West 1,498.24 feet to a point on the East line of the West 40.00 feet of the Southeast quarter of said Section 24 and the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 3:

A perpetual easement for irrigation purposes and for the use, construction and maintenance of an irrigation lateral, as created in instrument recorded in Docket 12335, page 1215, records of Maricopa County, Arizona, being 5.00 feet in width, being 2.50 feet on each side of the centerline described as follows:

BEGINNING at a point which bears North 01(Degree) 38' 30" East 1,760.50 feet and South 89(Degree) 57' 50" West 55.00 feet from the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE South 89(Degree) 57' 50" West 1,833.37 feet to the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 4:

A portion of the Southeast quarter of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

A strip of land 6.00 feet in width located West of and parallel to the Easterly boundary line of that certain Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona, described as follows:

COMMENCING at the South quarter corner of Section 24;

THENCE North 01(Degree) 28' 40" East along the West line of the Southeast quarter of said Section 24, 1,760.87 feet to a point on the South line of Lot 2 as shown in Book 11 of Maps, page 30, records of Maricopa County, Arizona;

THENCE North 89(Degree) 55' 44" East along said South line 794.70 feet to a point 6.00 feet West of and parallel to said Easterly boundary line of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the POINT OF BEGINNING;

THENCE continuing North 89(Degree) 55' 44" East, along said South line, 6.00 feet to the Northeast corner of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the Northwest corner of Quit Claim Deed Recorded in Document No. 95-388831, records of Maricopa County, Arizona;

THENCE South 01(Degree) 38' 36" West, along the Easterly boundary line of said Special Warranty Deed and the Westerly boundary line of said Quit Claim Deed, 84.00 feet to the beginning of a non-tangent curve concave Easterly and having a radial bearing of North 76(Degree) 55' 57" West;

THENCE Southerly along said curve and along said Easterly and Westerly boundary lines and through a central angle of 19(Degree) 06' 47" an arc length of 477.16 feet;

THENCE South 89(Degree) 55' 44" West to a point 6.00 feet West of and parallel to said Easterly and Westerly boundary lines to the beginning of a curve concave Easterly and having a radius of 1,436.40 feet;

THENCE Northerly along said curve 6.00 feet West of and parallel to said Easterly and Westerly boundary lines through a central angle of 19(Degree) 03' 50" an arc length of 477.93 feet;

THENCE North 01(Degree) 38' 36" East 6.00 feet West of and parallel to said Easterly and Westerly boundary lines 83.22 feet to the POINT OF BEGINNING.

EXHIBIT A

RECORDING Requested by  
and when recorded return to:

APN: 161-16-301-006

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC # A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No. : 31-0900553R  
Property Name: Cabana

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

The parties to this DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of July 31, 2001, are MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Trustor"), with a mailing address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, AMERICAN SECURITIES COMPANY OF NEVADA, a Nevada corporation ("Trustee"), with a mailing address at 1320 Willow Pass Road, Suite 205, Concord, California 94520, and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"), with a mailing address at 1320 Willow Pass Road, Suite 205, Concord, California 94520.

R E C I T A L S

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Beneficiary, and Beneficiary proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Deed of Trust, payable to the order of Beneficiary in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Deed of Trust, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. DEED OF TRUST

- 1.1 GRANT. For the purposes of and upon the terms and conditions of this Deed of Trust, Trustor irrevocably grants, bargains, sells, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may hereafter acquire in, to, under or derived from any or all of the following:

- a. That real property ("Land") located in Las Vegas, county of Clark, state of Nevada, and more particularly described on Exhibit A attached hereto;
- b. All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;
- c. All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
- d. All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;
- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Trustor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

#### ARTICLE 2. OBLIGATIONS SECURED

- 2.1 OBLIGATIONS SECURED. Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- a. Full and punctual payment to Beneficiary of all sums at any time owing under the Note;
  - b. Payment and performance of all covenants and obligations of Trustor under this Deed of Trust including, without limitation, indemnification obligations and advances made to protect the Property;
  - c. Payment and performance of all additional covenants and obligations of Borrower and Trustor under the Loan Documents;
  - d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Deed of Trust recites are secured hereby;
  - e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust;

- f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and
- g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation:
  - (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Trustor irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms of contained in Section 3.1, Beneficiary confers upon Trustor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Beneficiary, to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation or any other obligation of Borrower, Trustor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Beneficiary shall re-confer the License upon Trustor until the occurrence of another Default.



3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Beneficiary any duty to produce rents or profits. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (f) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 COVENANTS.

a. ALL LEASES. Trustor shall, at Trustor's sole cost and expense:

- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
- (ii) use reasonable efforts to keep the Property leased at all times to tenants which Trustor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
- (iii) promptly upon Beneficiary's request, deliver to Beneficiary a copy of each requested Lease and all amendments thereto and waivers thereof; and
- (iv) promptly upon Beneficiary's request, execute and record any additional assignments of landlord's interest under any Lease to Beneficiary and specific subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Beneficiary.

Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;
- (vii) except upon Beneficiary's request, execute any assignment of landlord's interest in any Lease; or
- (viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Trustor shall deposit with Beneficiary any sums received by Trustor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Trustor shall be held in trust by Trustor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Trustor with respect to any Lease which is less than \$50,000 shall be payable to Trustor. All such sums received by Beneficiary with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12b) and shall be deposited by Beneficiary into a pledged account in accordance with Section 6.12b. If no Default exists, Beneficiary shall release such Impounds to Trustor from time to time

as necessary to pay or reimburse Trustor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Beneficiary shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Trustor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Trustor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Beneficiary may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Beneficiary shall release any remaining such Impounds relating to the affected space to Trustor. Trustor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

b. MAJOR LEASES. Trustor shall, at Trustor's sole cost and expense, give Beneficiary prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Beneficiary or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Beneficiary; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Beneficiary. Trustor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4a as well as by the provisions of this Section.

c. FAILURE TO DENY REQUEST. Beneficiary's failure to deny any written request by Trustor for Beneficiary's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Beneficiary's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Beneficiary's consent to such request.

3.5 RIGHT OF SUBORDINATION. Beneficiary may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

#### ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Trustor pledges to Beneficiary and grants and assigns to Beneficiary a security interest to secure payment and performance of all of the Secured Obligations, in all of Trustor's right, title and interest in and to the following described personal property in which Trustor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Trustor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Uniform Commercial Code, as enacted in the State of Nevada, Chapters 104 and 104A of the Nevada Revised Statutes, as amended or recodified from time to time ("UCC").

4.2 COVENANTS. Trustor agrees: (a) to execute and deliver such documents as Beneficiary reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Beneficiary at least 30 days' prior written notice thereof; and (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Beneficiary's rights hereunder.

4.3 RIGHTS OF BENEFICIARY. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF BENEFICIARY UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

- a. DISPOSITION OF COLLATERAL. Beneficiary may: (i) upon written notice, require Trustor to assemble the Collateral and make it available to Beneficiary at a place reasonably designated by Beneficiary; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and
- b. OTHER RIGHTS. Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Beneficiary reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Beneficiary may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of the Collateral.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Beneficiary shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Beneficiary first to the reasonable expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Beneficiary may from time to time elect.

4.5 POWER OF ATTORNEY. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Trustor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Trustor represents and warrants to Beneficiary that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. LEGAL STATUS. Trustor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Trustor and Borrower are organized. Trustor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. PERMITS. Trustor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged in compliance with applicable law.

- c. AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity .
- d. VIOLATIONS. The execution, delivery and performance by Trustor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor or Borrower is a party or by which Trustor or Borrower is bound.
- e. LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Trustor or Borrower other than those previously disclosed in writing by Trustor or Borrower to Beneficiary.
- f. FINANCIAL STATEMENTS. The financial statements of Trustor and Borrower, of each general partner (if Trustor or Borrower is a partnership), of each member (if Trustor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Trustor or Borrower to Beneficiary: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan, or other accounting standards approved by Beneficiary. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Trustor or Borrower to Beneficiary and approved in writing by Beneficiary.
- g. REPORTS. All reports, documents, instruments and information delivered to Beneficiary in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Beneficiary accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. INCOME TAXES. There are no material pending assessments or adjustments of Trustor's or Borrower's income tax payable with respect to any year.
- i. SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. TITLE. Trustor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Deed of Trust is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Beneficiary and shown in the title insurance policy insuring the lien of this Deed of Trust; and (iii) other matters, if any, previously disclosed to Beneficiary by Trustor in a writing specifically referring to this representation and warranty.
- k. MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust, other than those (if any) previously approved by Beneficiary and shown on the title insurance policy insuring the lien of this Deed of Trust.

- l. ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Beneficiary, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Beneficiary prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.
- n. COLLATERAL. Trustor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Beneficiary by Trustor in writing specifically referring to this representation and warranty. Trustor's chief executive office (or residence, if applicable) is located at the address shown on page one of this Deed of Trust. Trustor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Trustor delivered to Beneficiary are complete and accurate in every respect. Trustor's legal name is exactly as shown on page one of this Deed of Trust.
- o. CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Beneficiary, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.
- p. HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Trustor to Beneficiary.
- q. HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.
- r. HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).
- s. WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Trustor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

- v. CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.
- w. HOMESTEAD. There is no homestead or other exemption available to Trustor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose this Deed of Trust.
- x. SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Trustor, and Trustor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Trustor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Trustor is able to pay its debts as they become due.
- y. SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Trustor hereby represents, warrants and covenants to Beneficiary that with respect to both Trustor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Trustor:

- a. each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- b. each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;
- c. each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;
- d. each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;
- e. if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;
- f. if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;
- g. each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

- h. each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured trade debt not to exceed \$1,000,000 in the aggregate with respect to Trustor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Trustor, as applicable) and is paid within thirty (30) days from the date incurred;
- i. each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- j. each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- k. each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- l. each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- m. each such entity has conducted and will conduct its business in its own name or in a registered trade name;
- n. each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- o. each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- p. each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- q. each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- r. each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- s. each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;
- t. each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;
- u. each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;
- v. each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;



- w. each such entity has not made and will not make loans to any person or entity;
- x. each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;
- y. each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;
- z. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- aa. each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- bb. each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- cc. if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;
- dd. if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;
- ee. each such entity will, as a condition to the closing of the Loan, deliver to Beneficiary a nonconsolidation opinion in form and substance acceptable to Beneficiary;
- ff. if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and
- gg. if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Trustor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Beneficiary is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Beneficiary a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Beneficiary or Trustee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Deed of Trust and perform Trustor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Trustor shall not, without Beneficiary's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Deed of Trust, Trustor agrees as follows:

- a. PROHIBITED ACTIVITIES. Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Trustor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

- b. HAZARDOUS MATERIALS LAWS. Trustor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.
- c. NOTICES. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened in writing against Trustor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.
- d. REMEDIAL ACTION. In response to knowledge or notification to Trustor of the presence of any Hazardous Materials on, under or about the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- e. INSPECTION BY BENEFICIARY. Upon reasonable prior notice to Trustor (except in the case of an emergency) and during normal business hours, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- f. LEGAL EFFECT OF SECTION. Trustor and Beneficiary agree that each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of Nevada Revised Statutes Section 40.502.

6.3 COMPLIANCE WITH LAWS. Trustor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Trustor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Trustor and Borrower to conduct the business(es) in which Trustor and Borrower are now engaged.

6.4 LITIGATION. Trustor shall promptly notify Beneficiary in writing of any litigation pending or threatened in writing against Trustor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened

(in writing) litigation against Trustor or Borrower if the aggregate damage claims against Trustor or Borrower exceed \$500,000.

- 6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Trustor shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Trustor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6 ACCOUNTING RECORDS. Trustor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Trustor or Borrower to prepare the financial statements delivered to and approved by Beneficiary in connection with the making of the Loan or other accounting standards approved by Beneficiary. Trustor shall permit and shall cause Borrower to permit any representative of Beneficiary, at any reasonable time and from time to time, upon reasonable prior notice to Trustor, to inspect, audit and examine such books and records and make copies of same.
- 6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor shall pay to Beneficiary the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Beneficiary's in-house or outside counsel, incurred by Beneficiary in connection with: (a) appraisals and inspections of the Property or Collateral required by Beneficiary as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Beneficiary at Trustor's request or wholly or partially for the benefit of Trustor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Trustor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Beneficiary may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Beneficiary together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Trustor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Trustor's right to contest such matters under this Deed of Trust or as expressly permitted in the Loan Documents, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Trustor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Beneficiary for eventual payment thereof in the event that Trustor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).
- 6.9 TAXES AND OTHER LIABILITIES. Trustor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Trustor shall promptly provide to Beneficiary copies of all tax and assessment notices pertaining to the Property. Trustor hereby authorizes Beneficiary to obtain, at Trustor's

expense, a tax service contract which shall provide tax information on the Property to Beneficiary for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Trustor shall insure the Property against loss or damage by fire and such other hazards as Beneficiary shall from time to time require; provided, however, (a) Beneficiary, at Beneficiary's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and (b) Beneficiary, at Beneficiary's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Trustor shall also carry public liability insurance and such other insurance as Beneficiary may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Beneficiary and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Trustor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Trustor to Beneficiary under any of the Loan Documents remain outstanding at Trustor's expense, with companies, and in substance and form satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance shall incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurance; (d) the solvency of any insurer; or (e) the payment of claims.

6.11 CONDEMNATION AND INSURANCE PROCEEDS.

a. ASSIGNMENT OF CLAIMS. Trustor absolutely and irrevocably assigns to Beneficiary all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Beneficiary, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Beneficiary. Beneficiary may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Trustor may settle as provided herein), but shall not be responsible for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Beneficiary.

b. APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Beneficiary; (cc) a cost breakdown for the work; (dd) if

reasonably required by Beneficiary, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Beneficiary; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security. Trustor acknowledges that the specific conditions described above are reasonable.

- c. APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Beneficiary chooses.

#### 6.12 IMPOUNDS.

- a. POST-DEFAULT IMPOUNDS. If required by Beneficiary at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Trustor shall deposit with Beneficiary such amounts ("Post-Default Impounds") on such dates (determined by Beneficiary as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Beneficiary. Beneficiary in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Beneficiary not exceeding 1 year and shall determine the fractional portion thereof that Trustor shall deposit with Beneficiary on each date specified by Beneficiary during such period. If the Post-Default Impounds paid by Trustor are not sufficient to pay the related Costs, Trustor shall deposit with Beneficiary upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Trustor in addition to (but without duplication of) any other Impounds (as defined below).
- b. ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Beneficiary or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Beneficiary shall not be a trustee, special depository or other fiduciary for Trustor with respect to such account, and the existence of such account shall not limit Beneficiary's rights under this Deed of Trust, any other agreement or any provision of law. If no Default exists, Beneficiary shall apply all Impounds to the payment of the related Costs, or in Beneficiary's sole discretion may release any or all Impounds to Trustor for application to and payment of such Costs. If a Default exists, Beneficiary may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Trustor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Trustor hereunder shall not be diminished by deposits of Impounds made by Trustor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Deed of Trust, Beneficiary may assign all Impounds in its possession to Beneficiary's assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Beneficiary may elect, Beneficiary shall pay to Trustor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Trustor under Section 6.9, (ii) all insurance premiums payable by Trustor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Trustor shall deliver to Beneficiary, promptly upon receipt, all bills for Costs for which Beneficiary has required Post-Default Impounds.

- 6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee hereunder at Trustor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Trustor's or Beneficiary's rights. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.
- 6.14 RIGHT OF INSPECTION. Beneficiary and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Trustor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms of this Deed of Trust. Beneficiary shall use reasonable efforts to assure that Beneficiary's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Trustor or Trustor's tenants on the Property.
- 6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN TRUSTOR. Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Beneficiary or as otherwise expressly permitted in the Note, Trustor shall not: (a) cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business); or (b) cause or permit a Transfer of any direct or indirect interest in any partnership, limited liability company, corporation, trust, or other entity comprising all or any portion of or holding any direct or indirect interest in Trustor or Borrower (other than the sale or exchange of a limited partnership interest or a non-managing membership interest). If any Transfer not expressly permitted in the Note or this Deed of Trust is made without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Trustor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Beneficiary's consent to any Transfer may be withheld, conditioned or delayed in Beneficiary's sole and absolute discretion.
- 6.16 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE. Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust, or a certified copy thereof, for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) join with Trustor in granting any easement on the Property; (d) join with Trustor in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustor in any respect. Except as may otherwise be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder

unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability and expense.

- 6.17 COMPENSATION OF TRUSTEE. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of this trust, including, without limitation, reasonable attorneys' fees. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.18 EXCULPATION. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Beneficiary and no such liability shall be asserted or enforced against Beneficiary, all such liability being expressly waived and released by Trustor.
- 6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Deed of Trust, Trustor agrees to defend, indemnify and hold harmless Trustee and the Beneficiary Group (as defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Beneficiary Group; (b) this Deed of Trust; (c) the execution of this Deed of Trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Trustor to perform Trustor's obligations under this Deed of Trust or the other Loan Documents; (e) any alleged obligation or undertaking on the Beneficiary Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Trustor or any contractor, agent, employee or representative of Trustor with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Trustor under Sections 5.1.p, 5.1.q, 5.1.r, or 6.2 above. The foregoing to the contrary notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Beneficiary Group or Trustee, or any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group or Trustee arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Deed of Trust on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Beneficiary Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Deed of Trust, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Trustee or the Beneficiary Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Trustee or the Beneficiary Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Beneficiary Group", as used herein, shall mean (1) Beneficiary (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Beneficiary, (3) the directors, officers, employees and agents of Beneficiary and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Trustor shall pay immediately upon Trustee's or Beneficiary's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Trustor agrees to use legal



counsel reasonably acceptable to Trustee and the Beneficiary Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND RECONVEYANCE OF THIS DEED OF TRUST, BUT TRUSTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 6.20 SUBSTITUTION OF TRUSTEE. From time to time, by a writing signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new trustee.
- 6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.
- 6.22 SALE OR PARTICIPATION OF LOAN. Trustor agrees that Beneficiary may at any time sell, assign, participate or securitize all or any portion of Beneficiary's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Beneficiary's sole discretion. Trustor further agrees that Beneficiary may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Beneficiary with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Trustor, any partner or member of Trustor, any constituent partner or member of Trustor, any guarantor and any nonborrower trustor). In the event of any such sale, assignment, participation or securitization, Beneficiary and the other parties to the same shall share in the rights and obligations of Beneficiary set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Trustor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Trustor to each purchaser, assignee or participant, and Trustor shall, within 15 days after request by Beneficiary, (x) deliver an estoppel certificate verifying for the benefit of Beneficiary and any other party designated by Beneficiary the status and the terms and provisions of the Loan in form and substance acceptable to Beneficiary, (y) provide any information, legal opinions or documents regarding Trustor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Beneficiary or Beneficiary's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Trustor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Trustor's rights or increasing Trustor's obligations. The indemnity obligations of Trustor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.
- 6.23 RECONVEYANCE. Upon Beneficiary's written request, and upon surrender of this Deed of Trust or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Trustee for cancellation, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Beneficiary nor Trustee shall have any duty to determine the rights

of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

- 6.24 SUBROGATION. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 6.25 MANAGEMENT AGREEMENTS. Without the prior written consent of Beneficiary, Trustor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Trustor represents, warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Trustor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Trustor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Beneficiary or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary.

#### ARTICLE 7. DEFAULT

- 7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. OPTIONAL DEFAULT. An "Optional Default" shall occur, at Beneficiary's option, upon the occurrence of any of the following events:
- (i) MONETARY. Borrower or Trustor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including without limitation, any monthly payment due under the Note.
  - (ii) FAILURE TO PERFORM. Borrower or Trustor shall fail to observe, perform or discharge any of Borrower's or Trustor's obligations, covenants, conditions or agreements, other than Borrower's or Trustor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Trustor, as the case may be, by Beneficiary or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Trustor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
  - (iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Trustor, or a guarantor, if any, to Beneficiary or in connection with any of the Loan Documents, or as an inducement to Beneficiary to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.
  - (iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Beneficiary) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Trustor under any of the Loan Documents, or any material portion of

the other assets of Borrower or Trustor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

- (v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Beneficiary) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Trustor promptly notifies Beneficiary of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Trustor delivers to Beneficiary immediately available funds in an amount sufficient, in Beneficiary's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of such funds and no Default occurs thereafter, Beneficiary shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Deed of Trust have been satisfied. Trustor acknowledges that the specific conditions described above are reasonable.
- (vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Beneficiary and relied upon by Beneficiary in making the Loan, and which change Beneficiary reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Trustor to pay or perform Borrower's or Trustor's obligations in accordance with the terms of the Note, this Deed of Trust, and the other Loan Documents.

b. AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

- (i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.
- (ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Beneficiary regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Trustor, any general partner or managing member of Borrower or Trustor, or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Beneficiary may, at its option, declare all sums owing to Beneficiary under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Beneficiary under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Beneficiary shall have all of the following rights and remedies:

- a. ENTRY ON PROPERTY. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Beneficiary or Trustee deem necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Trustor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Beneficiary deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority hereto, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Beneficiary's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;
- b. APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Beneficiary's right to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Trustor, Borrower or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents;
- c. JUDICIAL FORECLOSURE; INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- d. NONJUDICIAL FORECLOSURE. To execute a written notice of such Default and of the election to cause the Property to be sold to satisfy the Secured Obligations. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as

required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

Upon sale of the Property at any judicial or nonjudicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (viii) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (xi) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property;

- e. **MULTIPLE FORECLOSURES.** To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary or either of them determine in their sole discretion;
- f. **RIGHTS TO COLLATERAL.** To exercise all rights Trustee or Beneficiary may have with respect to the Collateral under this Deed of Trust, the UCC or otherwise at law; and
- g. **OTHER RIGHTS.** To exercise such other rights as Trustee or Beneficiary may have at law or in equity or pursuant to the terms and conditions of this Deed of Trust or any of the other Loan Documents.

In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal

property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. If any foreclosure sale is effected, Trustee shall apply the proceeds of such sale in the following order of priority: First, to the costs, fees and expenses of exercising the power of sale and of sale, including, without limitation, the payment of reasonable Trustee's fees and attorneys' fees; Second, to the payment of the Secured Obligations which are secured by this Deed of Trust, in such order as Beneficiary shall determine in its sole discretion; Third, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and Fourth, to the Trustor or the Trustor's successor in interest, or in the event the Property has been sold or transferred to another, to the vested owner of record at the time of the Trustee's sale.
- 7.5 WAIVER OF MARSHALING RIGHTS. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Trustor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Trustor agrees to pay to Beneficiary immediately and upon demand all costs and expenses incurred by Trustee and Beneficiary in the enforcement of the terms and conditions of this Deed of Trust (including, without limitation, statutory trustee's fees, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Trustor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (b) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 7.9 REMEDIES CUMULATIVE. All rights and remedies of Beneficiary and Trustee under this Deed of Trust and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Deed of Trust as though it were a mortgage). Beneficiary may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

#### ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The

Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Beneficiary or Trustee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Beneficiary's or Trustee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Beneficiary or Trustee in exercising any such right or remedy shall be construed to preclude Beneficiary or Trustee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Trustor shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances.
- 8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Beneficiary's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Beneficiary unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Deed of Trust or any of the other Loan Documents, such costs or expenses shall be reasonable.
- 8.4 PERMITTED CONTESTS. After prior written notice to Beneficiary, Trustor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Trustor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Trustor pursues the contest diligently, in a manner which Beneficiary determines is not prejudicial to Beneficiary, and does not impair the lien of this Deed of Trust; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Beneficiary shall not be in any danger of any civil or criminal liability; and (d) if required by Beneficiary, Trustor deposits with Beneficiary any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Beneficiary to protect Beneficiary from the consequences of the contest being unsuccessful. Trustor's right to contest pursuant to the terms of this provision shall in no way relieve Trustor or Borrower of its obligations under the Loan or to make payments to Beneficiary as and when due.
- 8.5 FURTHER ASSURANCES. Trustor shall, upon demand by Beneficiary or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Trustor and Beneficiary regarding their respective rights and obligations under this Deed of Trust or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

- 8.7 TRUSTOR AND BENEFICIARY DEFINED. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.
- 8.8 DISCLAIMERS.
- a. RELATIONSHIP. The relationship of Trustor and Beneficiary under this Deed of Trust and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the other Loan Documents: (i) Beneficiary is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Trustor, and Beneficiary does not intend to ever assume such status; (ii) Beneficiary's activities in connection with this Deed of Trust and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Beneficiary does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Beneficiary shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor.
- b. NO LIABILITY. Beneficiary shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor or any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.
- 8.9 SEVERABILITY. If any term of this Deed of Trust or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law.
- 8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Beneficiary under the deed of trust established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the deed of trust with any security interest created by the security agreement. Beneficiary may elect to exercise or enforce any of its rights, remedies or interests under either or both the deed of trust or the security agreement as Beneficiary may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the deed of trust and the security agreement.
- 8.11 MERGER. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 8.12 OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.



- 8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Deed of Trust as a "Trustor" agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.
- 8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Trustor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17 GOVERNING LAW. This Deed of Trust was accepted by Beneficiary in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Deed of Trust, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 enforcement of Beneficiary's STATUTORY POWER OF SALE and all other remedies granted hereunder, Beneficiary's rights under Section 6.2 above, and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Deed of Trust, the Note and other Loan Documents.
- 8.18 CONSENT TO JURISDICTION. Trustor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Trustor against Beneficiary, arising out of or relating to this Deed of Trust, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Trustor's principal place of business is located over any suit, action or proceeding, brought by Beneficiary against Trustor, arising out of or relating to this Deed of Trust, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral. Trustor irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 8.19 EXHIBITS. Exhibit A is incorporated into this Deed of Trust by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All notices and other communications that are required or permitted to be given to a party under this Deed of Trust or the other Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Deed of Trust and the facsimile numbers for the parties are as follows:

Beneficiary:

WELLS FARGO BANK, N.A.  
FAX No.: (925) 691-5947

Trustee:

AMERICAN SECURITIES COMPANY  
OF NEVADA  
FAX No.: (925) 691-5947

Trustor:

MHC STAGECOACH, L.L.C.  
FAX No.: (312) 279-1715

Trustor's principal place of business is at the address set forth on page 1 of this Deed of Trust. A copy of any notice to Trustor shall be sent as follows:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Trustor whose address is set forth on page 1 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. BENEFICIARY (BY ITS ACCEPTANCE HEREOF) AND TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF BENEFICIARY OR TRUSTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER INTO THIS DEED OF TRUST.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

MHC STAGECOACH, L.L.C.,  
a Delaware limited liability company

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

By: /s/ John M. Zoeller

-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK                )

This instrument was acknowledged before me on 8/1, 2001 by John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company.

WITNESS my hand and official seal.

/s/ Mary Dobronski  
-----  
Print Name: Mary Dobronski

My Commission Expires:

11/3/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF LAND

Exhibit A to DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Trustor", AMERICAN SECURITIES COMPANY OF NEVADA, as "Trustee", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Beneficiary".

Description of Land. The Land referred to in this Deed of Trust is situated in the county of Clark, state of Nevada and is described as follows:

The Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada.

EXCEPTING THEREFROM the described premises:

The North Forty feet (40.00') and the East Forty feet (40.00') of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada; together with the certain spandrel area in the Northeast Quarter corner thereof, also being the Southwest corner of the intersection of East Twain Avenue and Cabana Drive, bounded as follows: on the North by the South line of the North Forty feet (40.00'); on the East by the West line of the East Forty feet (40.00'), and on the Southwest by the arc of a curve concave Southwesterly, having a radius of Twenty five feet (25.00') that is tangent to the South line of said North Forty feet (40.00') is tangent to the South line of said North Forty feet (40.00') and tangent to the West line of said Forty feet (40.00').

ALSO BEING described as that portion of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Northeast Quarter (NE 1/4) of the Southwest Quarter of said Section 16; thence South 01(Degree) 55' 58" East a distance of 40.01 feet to a point on the Southerly right of way line of Twain Avenue (80.00 feet wide) said point being the TRUE POINT OF BEGINNING; thence North 89(Degree) 09' 31" East, along said Southerly right of way of Twain Avenue a distance of 1259.02 feet to a point of tangent curve concave to the Southwest having a radius of 25.00 feet; thence Southeasterly along the arc of said curve through a central angle of 89(Degree) 28' 02" an arc length of 39.04 feet to a point on the Westerly right of way line of Cabana Drive (80.00 feet wide); thence South 01(Degree) 22' 27" East along said Westerly right of way line of Cabana Drive a distance of 1238.26 feet; thence South 88(Degree) 17' 57" West a distance of 1271.25 feet; thence North 01(Degree) 55' 58" West a distance of 1282.27 feet to the TRUE POINT OF BEGINNING.

EXHIBIT A

Recording requested by  
and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC #A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No.: 31-0900553R  
Property Name: Indian Oaks

Prepared by:

Lee M. Smolen  
Sidley Austin Brown & Wood  
10 South Dearborn  
Chicago, Illinois 60603

MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND  
LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING)

July 31, 2001

THIS MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) (the "Mortgage") is made and entered into by and among MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Mortgagor"), having an address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, and WELLS FARGO NATIONAL BANK, NATIONAL ASSOCIATION ("Lender" or "Mortgagee").

THIS MORTGAGE EVIDENCES A MULTI-STATE LOAN WHICH IS SECURED BY REAL PROPERTY LOCATED OUTSIDE THE STATE OF FLORIDA AND REAL PROPERTY LOCATED IN BREVARD, VOLUSIA, AND MANATEE COUNTIES, FLORIDA. FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$61,250.00 AND FLORIDA NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX IN THE AMOUNT OF \$35,000.00 ARE BEING PAID UPON RECORDATION OF ONE OF THE FLORIDA MORTGAGES IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. ATTACHED HERETO AS EXHIBIT B IS A DESCRIPTION OF THE CALCULATION OF LIABILITY FOR DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX.

R E C I T A L S

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Mortgagee, and Mortgagee proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Mortgage, payable to the order of Mortgagee in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Mortgage, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE I. MORTGAGE

1.1 GRANT. For the purposes of and upon the terms and conditions of this Mortgage, Mortgagor irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest to Mortgagee, its successors and assign, with right of entry and possession, all of Mortgagor's right, title and interest, whether now owned or hereafter acquired, in or to all of the following:

(a) That real property ("Land") located in Rockledge, county of Brevard, state of Florida, and more particularly described on Exhibit A attached hereto;

(b) All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, all sewer capacity rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;

(c) All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;

(d) All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;

(e) All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;

(f) All additions and accretions to the property described above;

(g) All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Mortgagor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and

(h) All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE II. OBLIGATIONS SECURED

2.1 OBLIGATIONS SECURED. Mortgagor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

(a) Full and punctual payment to Mortgagee of all sums at any time owing under the Note;

(b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage, including, without limitation, indemnification obligations and advances made to protect the Property;

(c) Payment and performance of all additional covenants and obligations of Borrower and Mortgagor under the Loan Documents;

(d) Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Mortgage recites are secured hereby;

(e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage;

(f) All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 FUTURE ADVANCES. This Mortgage is given to secure not only the Secured Obligations, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee or the holder hereof, or otherwise as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Secured Obligations that may be so secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made under this Mortgage for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements as provided for



herein, plus any increases in the principal balance as the result of negative amortization or deferred interest, if any. It is agreed that any additional sum or sums advanced by Mortgagee pursuant to the terms hereof shall be equally secured with and have the same priority as the original Secured Obligations and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes or other guaranties of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional promissory note or guaranty or promissory notes or guaranties executed and delivered pursuant to this paragraph shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this paragraph.

2.3 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.4 MATURITY DATE. The maturity date of the Note is September 1, 2011.

2.5 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

#### ARTICLE III. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Mortgagor irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Mortgagee confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect

and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. Upon Mortgagor's cure of the Default, Mortgagee shall re-confer upon Mortgagor a revocable license to collect and retain the Payments as they become due and payable, until the occurrence of a Default. All Payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Mortgagee, to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation or any other obligation of Borrower, Mortgagor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (e) the exercise of or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (f) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

#### 3.4 COVENANTS.

(a) ALL LEASES. Mortgagor shall, at Mortgagor's sole cost and expense:

(i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;

(ii) use reasonable efforts to keep the Property leased at all times to tenants whom Mortgagor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);

(iii) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease and all amendments thereto and waivers thereof; and

(iv) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and specific subordinations of any Lease to this Mortgage, in form and substance satisfactory to Mortgagee.

Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;

(vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;

(vii) except upon Mortgagee's request, execute any assignment of landlord's interest in any Lease; or

(viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Mortgagor shall deposit with Mortgagee any sums received by Mortgagor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Mortgagor with respect to any Lease which is less than \$50,000 shall be payable to Mortgagor. All such sums received by Mortgagee with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12) and shall be deposited by Mortgagee into a pledged account in accordance with Section 6.12. If no Default exists, Mortgagee shall release such Impounds to Mortgagor from time to time as necessary to pay or reimburse Mortgagor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Mortgagee shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Mortgagor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Mortgagor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Mortgagee may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Mortgagee shall release any remaining such Impounds relating to the affected space to Mortgagor. Mortgagor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

(b) MAJOR LEASES. Mortgagor shall, at Mortgagor's sole cost and expense, give Mortgagee prompt written notice of any material default by landlord or tenant under any

Major Lease (as defined below). Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;

(ii) materially reduce any rent or other sums due from the tenant under any Major Lease;

(iii) terminate or materially modify or amend any Major Lease; or

(iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Mortgagee; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Mortgagee. Mortgagor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4(a) as well as by the provisions of this Section.

(c) FAILURE TO DENY REQUEST Mortgagee's failure to deny any written request by Mortgagor for Mortgagee's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Mortgagee's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Mortgagee's consent to such request.

3.5 RIGHT OF SUBORDINATION. Mortgagee may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Mortgage to any Lease.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Mortgagor grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of Mortgagor's right, title and interest in and to the following described personal property in which Mortgagor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Mortgagor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under the Florida Uniform Commercial Code (the "UCC"), this Mortgage constitutes a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended and recodified from time to time, this Mortgage shall constitute a fixture filing recorded in the real estate records. Notwithstanding the foregoing, nothing herein shall be deemed to create any lien or interest in favor of Mortgagee under this Mortgage in any such Collateral which is not a fixture, and the purpose of this Article IV is to create a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended or recodified from time to time.

4.2 COVENANTS. Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Mortgagee at least 30 days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder.

4.3 RIGHTS OF MORTGAGEE. In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and

preserve the Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF MORTGAGEE UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

(a) DISPOSITION OF COLLATERAL. Mortgagee may: (i) upon written notice, require Mortgagor to assemble the Collateral and make it available to Mortgagee at a place reasonably designated by Mortgagee; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and

(b) OTHER RIGHTS. Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of the Collateral.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Mortgagee may from time to time elect.

4.5 POWER OF ATTORNEY. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral, and upon a Default, take

any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

#### ARTICLE V. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Mortgagor represents and warrants to Mortgagee that, to Mortgagor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

(a) LEGAL STATUS. Mortgagor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Mortgagor and Borrower are organized. Mortgagor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.

(b) PERMITS. Mortgagor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged in compliance with applicable law.

(c) AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Mortgagor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.

(d) VIOLATIONS. The execution, delivery and performance by Mortgagor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Mortgagor or Borrower is a party or by which Mortgagor or Borrower is bound.

(e) LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Mortgagor or Borrower other than those previously disclosed in writing by Mortgagor or Borrower to Mortgagee.

(f) FINANCIAL STATEMENTS. The financial statements of Mortgagor and Borrower, of each general partner (if Mortgagor or Borrower is a partnership), of each member (if Mortgagor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Mortgagor or Borrower to Mortgagee: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan, or other accounting standards approved by Mortgagee. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged,

pledged or encumbered except as previously disclosed in writing by Mortgagor or Borrower to Mortgagee and approved in writing by Mortgagee.

(g) REPORTS. All reports, documents, instruments and information delivered to Mortgagee in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Mortgagee accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.

(h) INCOME TAXES. There are no material pending assessments or adjustments of Mortgagor's or Borrower's income tax payable with respect to any year.

(i) SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.

(j) TITLE. Mortgagor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, previously disclosed to Mortgagee by Mortgagor in a writing specifically referring to this representation and warranty.

(k) MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Mortgage, other than those (if any) previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage.

(l) ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Mortgagee, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.

(m) LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.

(n) COLLATERAL. Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Mortgagee by Mortgagor in writing specifically referring to this representation and warranty. Mortgagor's chief



executive office (or principal residence, if applicable) is located at the address shown on page one of this Mortgage. Mortgagor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Mortgagor delivered to Mortgagee are complete and accurate in every respect. Mortgagor's legal name is exactly as shown on page one of this Mortgage.

(o) CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Mortgagee, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

(p) HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Mortgagee, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Mortgagor to Mortgagee.

(q) HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.

(r) HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).

(s) WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(t) COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Mortgagor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.

(u) PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

(v) CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.

(w) HOMESTEAD. There is no homestead or other exemption available to Mortgagor which would materially interfere with the right to sell the Property or the right to foreclose this Mortgage.

(x) SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors

of Mortgagor, and Mortgagor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Mortgagor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Mortgagor is able to pay its debts as they become due.

(y) SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Mortgagor hereby represents, warrants and covenants to Mortgagee that with respect to both Mortgagor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Mortgagor:

(a) each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(b) each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(c) each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;

(d) each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;

(e) if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;

(f) if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;

(g) each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(h) each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured

trade debt not to exceed \$1,000,000 in the aggregate with respect to Mortgagor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Mortgagor, as applicable) and is paid within thirty (30) days from the date incurred;

(i) each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(j) each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;

(k) each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;

(l) each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;

(m) each such entity has conducted and will conduct its business in its own name or in a registered trade name;

(n) each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;

(o) each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;

(p) each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;

(q) each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;

(r) each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;

(s) each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;

(t) each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;

(u) each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;

(v) each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;

(w) each such entity has not made and will not make loans to any person or entity;

(x) each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;

(y) each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;

(z) if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;

(aa) each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(bb) each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;

(cc) if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;

(dd) if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;

(ee) each such entity will, as a condition to the closing of the Loan, deliver to Mortgagee a nonconsolidation opinion in form and substance acceptable to Mortgagee;

(ff) if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and

(gg) if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years

immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

5.3 COMMERCIAL LOAN. Borrower warrants that the loan evidenced by this Note is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

#### ARTICLE VI. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Mortgagor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.11, Mortgagee elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Mortgagee is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Mortgagee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Mortgagor shall not, without Mortgagee's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the

Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit physical waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Mortgage, Mortgagor agrees as follows:

(a) PROHIBITED ACTIVITIES. Mortgagor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Mortgagor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

(b) HAZARDOUS MATERIALS LAWS. Mortgagor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) NOTICES. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Mortgagor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials

Claims") pending or threatened in writing against Mortgagor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated by or with Hazardous Materials.

(d) REMEDIAL ACTION. In response to knowledge of or notification to Mortgagor of the presence of any Hazardous Materials on, under or about the Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required of Mortgagor by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(e) INSPECTION BY MORTGAGEE. Upon reasonable prior notice to Mortgagor (except in the event of an emergency) and during normal business hours, Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.

(f) LEGAL EFFECT OF SECTION. Mortgagor and Mortgagee agree that: (i) this Hazardous Materials Section is intended as Mortgagee's written request for information (and Mortgagor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5, or any other applicable law; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Mortgagee and Mortgagor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736, or any other applicable law.

6.3 COMPLIANCE WITH LAWS. Mortgagor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Mortgagor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged.

6.4 LITIGATION. Mortgagor shall promptly notify Mortgagee in writing of any litigation pending or threatened in writing against Mortgagor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened (in writing) litigation against Mortgagor or Borrower if the aggregate damage claims against Mortgagor or Borrower exceed \$500,000.

6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Mortgagor shall not:  
(a) merge or consolidate with any other entity or permit Borrower to merge or

consolidate with any other entity; (b) make any substantial change in the nature of Mortgagor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Mortgagor's assets except in the ordinary course of Mortgagor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.

6.6 ACCOUNTING RECORDS. Mortgagor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan or other accounting standards approved by Mortgagee. Mortgagor shall permit and shall cause Borrower to permit any representative of Mortgagee, at any reasonable time and from time to time, upon reasonable prior notice to Mortgagor, to inspect, audit and examine such books and records and make copies of same.

6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor shall pay to Mortgagee the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Mortgagee's in-house or outside counsel, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property or Collateral required by Mortgagee as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Mortgagor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Mortgagee may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Mortgagor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Mortgagor's right to contest such matters under this Mortgage or as expressly permitted in the Loan Documents, Mortgagor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the



event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

6.9 TAXES AND OTHER LIABILITIES. Mortgagor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Mortgagor shall promptly provide to Mortgagee copies of all tax and assessment notices pertaining to the Property. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Mortgagor shall insure the Property against loss or damage by fire and such other hazards as Mortgagee shall from time to time require; provided, however, (a) Mortgagee, at Mortgagee's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and (b) Mortgagee, at Mortgagee's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Mortgagor shall also carry public liability insurance and such other insurance as Mortgagee may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Mortgagee and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Mortgagor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Mortgagor to Mortgagee under any of the Loan Documents remain outstanding at Mortgagor's expense, with companies, and in substance and form satisfactory to Mortgagee. Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance shall not incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurance; (d) the solvency of any insurer; or (e) the payment of claims.

#### 6.11 INSURANCE AND CONDEMNATION PROCEEDS.

(a) ASSIGNMENT OF CLAIMS. Mortgagor absolutely and irrevocably assigns to Mortgagee all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Mortgagor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Mortgagee, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Mortgagee. Mortgagee may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Mortgagor may settle as provided herein), but shall not be responsible

for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Mortgagee.

(b) APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Mortgagor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Mortgagee of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) delivery to Mortgagee in form and content acceptable to Mortgagee of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Mortgagee; (cc) a cost breakdown for the work; (dd) if reasonably required by Mortgagee, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Mortgagee; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security. Mortgagor acknowledges that the specific conditions described above are reasonable.

(c) APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds or if a Default occurs at any time thereafter, Mortgagee may, at Mortgagee's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

#### 6.12 IMPOUNDS.

(a) POST-DEFAULT IMPOUNDS. If required by Mortgagee at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Mortgagor shall deposit with Mortgagee such amounts ("Post-Default Impounds") on such dates (determined by Mortgagee as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Mortgagee. Mortgagee in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Mortgagee not exceeding 1 year and shall determine the fractional portion thereof that Mortgagor shall deposit with Mortgagee

on each date specified by Mortgagee during such period. If the Post-Default Impounds paid by Mortgagor are not sufficient to pay the related Costs, Mortgagor shall deposit with Mortgagee upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Mortgagor in addition to (but without duplication of) any other Impounds (as defined below).

(b) ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Mortgagee or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Mortgagee shall not be a trustee, special depository or other fiduciary for Mortgagor with respect to such account, and the existence of such account shall not limit Mortgagee's rights under this Mortgage, any other agreement or any provision of law. If no Default exists, Mortgagee shall apply all Impounds to the payment of the related Costs, or in Mortgagee's sole discretion may release any or all Impounds to Mortgagor for application to and payment of such Costs. If a Default exists, Mortgagee may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Mortgagor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Mortgagor hereunder shall not be diminished by deposits of Impounds made by Mortgagor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Mortgage, Mortgagee may assign all Impounds in its possession to Mortgagee's assignee, whereupon Mortgagee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Mortgagee may elect, Mortgagee shall pay to Mortgagor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Mortgagor under Section 6.9, (ii) all insurance premiums payable by Mortgagor under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Mortgagor shall deliver to Mortgagee, promptly upon receipt, all bills for Costs for which Mortgagee has required Post-Default Impounds.

6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14 RIGHT OF INSPECTION. Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Mortgagor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage. Mortgagee shall use reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property.

6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN MORTGAGOR.

Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Mortgagee or as otherwise expressly permitted in the Note, Mortgagor shall not cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business), or cause or permit a Transfer of any direct or indirect interest (whether general partnership interest, stock, non-managing member limited liability company interest, trust, or otherwise) in Mortgagor or Borrower. In the event of any Transfer that is not expressly permitted in the Note and is without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Mortgagor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Mortgagee's consent to any Transfer may be withheld, conditioned or delayed in Mortgagee's sole and absolute discretion.

6.16 INTENTIONALLY OMITTED.

6.17 INTENTIONALLY OMITTED.

6.18 EXCULPATION. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after a Default or from any other act or omission of Mortgagee in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Mortgagee and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Mortgage, Mortgagor agrees to defend, indemnify and hold harmless the Mortgagee Group (as hereinafter defined) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Mortgagee Group; (b) this Mortgage; (c) the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (d) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan Documents; (e) any alleged obligation or undertaking on the Mortgagee Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property; or (g) any claim, loss,

damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Mortgagor under Section 6.2 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Mortgagee Group, or any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Mortgage on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Mortgage, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Mortgagee Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Mortgagee Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Mortgagee Group", as used herein, shall mean (1) Mortgagee (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Mortgagee, (3) the directors, officers, employees and agents of Mortgagee and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Mortgagor shall pay immediately upon Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Mortgagor agrees to use legal counsel reasonably acceptable to the Mortgagee Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE SATISFACTION AND RELEASE OF THIS MORTGAGE, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20 INTENTIONALLY OMITTED.

6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.

Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.

6.22 SALE OR PARTICIPATION OF LOAN. Mortgagor agrees that Mortgagee may at any time sell, assign, participate or securitize all or any portion of Mortgagee's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Mortgagee with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Mortgagor, any partner or member of Mortgagor, any constituent partner or member of Mortgagor, any guarantor and any nonborrower mortgagor). In the event of any such sale, assignment, participation or securitization, Mortgagee and the other parties to the same shall share in the rights and obligations of Mortgagee set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Mortgagor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Mortgagor to each purchaser, assignee or participant, and Mortgagor shall, within 15 days after request by Mortgagee, (x) deliver an estoppel certificate verifying for the benefit of Mortgagee and any other party designated by Mortgagee the status and the terms and provisions of the Loan in form and substance acceptable to Mortgagee, (y) provide any information, legal opinions or documents regarding Mortgagor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Mortgagee or Mortgagee's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Mortgagor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Mortgagor's rights or increasing Mortgagor's obligations. The indemnity obligations of Mortgagor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23 RELEASE. Upon payment in full of the Secured Obligations, and satisfaction of all of the covenants, warranties, undertakings and agreements made in this Mortgage and in the other Loan Documents (including, without limitation, repayment in full of all principal, interest and other amounts owing under the Note) are kept and performed, and all obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, Mortgagee shall release, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any release executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the release may describe the grantee as "the person or persons legally entitled thereto". Mortgagee shall have no duty to determine the rights of persons claiming to be rightful grantees of any release. When the Property has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

6.24 SUBROGATION. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

6.25 MANAGEMENT AGREEMENTS. Without the prior written consent of Mortgagee, Mortgagor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Mortgagor represents,

warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Mortgagor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Mortgagor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Mortgagee or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Mortgagee shall have the right to terminate, or to direct Mortgagor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee.

#### ARTICLE VII. DEFAULT

7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).

(a) OPTIONAL DEFAULT. An "Optional Default" shall occur, at Mortgagee's option, upon the occurrence of any of the following events:

(i) MONETARY. Borrower or Mortgagor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.

(ii) FAILURE TO PERFORM. Borrower or Mortgagor shall fail to observe, perform or discharge any of Borrower's or Mortgagor's obligations, covenants, conditions or agreements, other than Borrower's or Mortgagor's payment obligations, under the Note, this Mortgage or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Mortgagor, as the case may be, by Mortgagee or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Mortgagor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.

(iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Mortgagor, or a guarantor, if any, to Mortgagee or in connection with any of the Loan Documents, or as an inducement to Mortgagee to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

(iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Mortgagee) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Mortgagor under any of the Loan Documents, or any material portion of the other assets of Borrower or Mortgagor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

(v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Mortgagee) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Mortgagor promptly notifies Mortgagee of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Mortgagor delivers to Mortgagee immediately available funds in an amount sufficient, in Mortgagee's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of such funds and no Default occurs thereafter, Mortgagee shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Mortgage have been satisfied. Mortgagor acknowledges that the specific conditions described above are reasonable.

(vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Mortgagee and relied upon by Mortgagee in making the Loan, and which change Mortgagee reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Mortgagor to pay or perform Borrower's or Mortgagor's obligations in accordance with the terms of the Note, this Mortgage, and the other Loan Documents.

(b) AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

(i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.

(ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Mortgagee regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Mortgagor, any general partner or managing member of Borrower or Mortgagor,



or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Mortgagee may, at its option, declare all sums owing to Mortgagee under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Mortgagee under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Mortgagee shall have all of the following rights and remedies:

(a) ENTRY ON PROPERTY. With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Mortgagee deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Mortgagor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Mortgagee deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Mortgagee's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority hereto, the judgment of Mortgagee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Mortgagee's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Mortgagee as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Mortgagee's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;

(b) APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Mortgagee's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Mortgagor, Borrower or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents;

(c) INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

(d) FORECLOSURE. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee.

(i) In the event foreclosure proceedings are filed by Mortgagee, all expenses incident to such proceeding, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property or any part thereof.

(ii) Mortgagee may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Mortgage on the remaining portion of the Property foreclosed.

Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and

agrees that: (viii) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (xi) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property;

(e) MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;

(f) RIGHTS TO COLLATERAL. To exercise all rights Mortgagee may have with respect to the Collateral under this Mortgage, the UCC or otherwise at law; and

(g) OTHER RIGHTS. To exercise such other rights as Mortgagee may have at law or in equity or pursuant to the terms and conditions of this Mortgage or any of the other Loan Documents.

In connection with any sale or sales hereunder, Mortgagee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. To the fullest extent permitted by law, proceeds of any sale under this Mortgage shall be applied to the extent funds are so available to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', managers', and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Mortgagee under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

7.5 WAIVER OF MARSHALING RIGHTS. Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations.

7.6 NO CURE OR WAIVER. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Mortgagor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor agrees to pay to Mortgagee immediately and upon demand all costs and expenses incurred by Mortgagee in the enforcement of the terms and conditions of this Mortgage (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.

7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Mortgagor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (b) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

7.9 REMEDIES CUMULATIVE. All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently.

#### ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF MORTGAGOR UNDER THIS

MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Mortgagee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Mortgagee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Mortgagee in exercising any such right or remedy shall be construed to preclude Mortgagee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Mortgagor shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Mortgagee's consent, approval, acceptance or satisfaction is required under any provision of this Mortgage or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Mortgagee unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Mortgage or any of the other Loan Documents, such costs or expenses shall be reasonable.

8.4 PERMITTED CONTESTS. After prior written notice to Mortgagee, Mortgagor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Mortgagor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Mortgagor pursues the contest diligently, in a manner which Mortgagee determines is not prejudicial to Mortgagee, and does not impair the lien of this Mortgage; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Mortgagee shall not be in any danger of any civil or criminal liability; and (d) if required by Mortgagee, Mortgagor deposits with Mortgagee any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Mortgagee to protect Mortgagee from the consequences of the contest being unsuccessful. Mortgagor's right to contest pursuant to the terms of this provision shall in no way relieve Mortgagor or Borrower of its obligations under the Loan or to make payments to Mortgagee as and when due.

8.5 FURTHER ASSURANCES. Mortgagor shall, upon demand by Mortgagee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the provisions hereof.

8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under this Mortgage or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 MORTGAGOR AND MORTGAGEE DEFINED. The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Property, and the term "Mortgagee" includes the original Mortgagee and any future owner or holder, including assignees, pledgees and participants, of the Note or any interest therein.

#### 8.8 DISCLAIMERS.

(a) RELATIONSHIP. The relationship of Mortgagor and Mortgagee under this Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Mortgagee neither undertakes nor assumes any responsibility or duty to Mortgagor or to any third party with respect to the Property. Notwithstanding any other provisions of this Mortgage and the other Loan Documents: (i) Mortgagee is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Mortgagor, and Mortgagee does not intend to ever assume such status; (ii) Mortgagee's activities in connection with this Mortgage and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Mortgagee does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Mortgagor.

(b) NO LIABILITY. Mortgagee shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Mortgagor or any of Mortgagor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Mortgagor or any of Mortgagor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

8.9 SEVERABILITY. If any term of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to

which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Mortgagee under the Mortgage established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the Mortgage with any security interest created by the security agreement. Mortgagee may elect to exercise or enforce any of its rights, remedies or interests under either or both the Mortgage or the security agreement as Mortgagee may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the Mortgage and the security agreement.

8.11 MERGER. No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.

8.12 OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL. If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.

8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Mortgage as a Mortgagor agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon any separate property or community property of that person.

8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.

8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.

8.17 GOVERNING LAW. This Mortgage was accepted by Mortgagee in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and

performance, this Mortgage, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 and security interests created pursuant thereto and pursuant to the other Loan Documents shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Mortgage, the Note and other Loan Documents.

8.18 CONSENT TO JURISDICTION. Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Mortgagee against Mortgagee, arising out of or relating to this Mortgage, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Mortgagor's principal place of business is located over any suit, action or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to this Mortgage, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Mortgagee to foreclose this Mortgage or any action brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.19 EXHIBITS. Exhibit A is incorporated into this Mortgage by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All requests, demands, notices and other communications that are required or permitted to be given to a party under this Mortgage shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Mortgage and the facsimile numbers for the parties are as follows:

Mortgagee: WELLS FARGO BANK, N.A.  
FAX NO.: (925) 691-5947

Mortgagor: MHC STAGECOACH, L.L.C.  
FAX NO.: (312) 279-1715

Mortgagor's principal place of business is at the address set forth on page 1 of this Mortgage. A copy of any notice to Mortgagor shall be sent as follows:



Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Mortgagor whose address is set forth on page 1 of this Mortgage hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Mortgagor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. MORTGAGEE (BY ITS ACCEPTANCE HEREOF) AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the day and year first above written.

WITNESS/ATTEST:

MORTGAGOR:

MHC STAGECOACH, L.L.C., a Delaware  
limited liability company

/s/ Lawrence M. Gritton  
Print Name: Lawrence M. Gritton

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

/s/ Benjamin J. Randall  
Print Name: Benjamin J. Randall

By: /s/ John M. Zoeller  
-----  
Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

STATE OF IL            )  
                          ) SS:  
COUNTY OF COOK        )

On 8/1, 2001 before me, Jennifer Usher, Notary Public, personally appeared John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company, personally known to me to be the person whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Jennifer Usher  
-----  
Print Name: Jennifer Usher

My Commission Expires:

1/6/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL  
Serial No., if any: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF LAND

Exhibit A to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Land referred to in this Mortgage is situated in the county of Brevard, state of Florida and is described as follows:

PARCEL A:

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 21, and run North 89(degrees) 50' 50" East, along the North line of said Section 21, a distance of 330.04 feet to the Point of Beginning; thence continue North 89(degrees) 50' 50" East, along said North line, a distance of 816.83 feet; thence South 05(degrees) 47' 10" West, a distance of 2488.78 feet; thence North 89(degrees) 53' 00" West, a distance of 419.86 feet; thence South 01(degrees) 04' 00" East, a distance of 150.00 feet, to a point on the North Right of Way line of Barnes Boulevard (a 100 foot Right of Way); thence North 89(degrees) 53' 00" West, along said North Right of Way line, a distance of 100.02 feet; thence North 01(degrees) 04' 00" West, parallel to the West line of said Northwest 1/4, a distance of 2623.29 feet, to the Point of Beginning.

PARCEL B:

A perpetual non-exclusive easement for the benefit of Parcel A for surface water runoff from "Pod #2" through a weir on said land eastward to an existing drainage ditch as set forth in Grant of Easement from George M. Green, Jr. and Sandie J. Green in favor of The Indian Oaks Corporation, dated July 27, 1987, recorded August 4, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2826, page 2681; and modified by Stipulated Settlement in Civil Action No. 87-9785-CA-C, The Indian Oaks Corporation, a Florida corporation, Plaintiffs, vs. George M. Green, Jr. and Sandie J. Green, his wife, Defendants, dated July 27, 1987, recorded August 20, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2831, page 2211, more particularly described as follows:

Beginning at the approximate Southwest corner of land to the East as described in Deed recorded in Official Records Book 2471, page 2094, Public Records of Brevard County, Florida, said point being on the public drainage ditch on the north side of Barnes Boulevard; thence north along an existing approximately twenty (20) foot wide drainage ditch on the westerly boundary of the land described in said Deed for an approximate distance of 844.00 feet to an outlet pipe which extends easterly into said drainage ditch from a Type "C" inlet weir located on "Pod #2" of Parcel A.

EXHIBIT A

## EXHIBIT B

## CALCULATION OF DOCUMENTARY STAMP AND INTANGIBLE PERSONAL PROPERTY TAX

Exhibit B to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

This Mortgage is part of an out-of-state loan transaction which only partially secures the loan. This Mortgage encumbers the property described on Exhibit A, and separate mortgages are being executed and delivered by Mortgagor encumbering certain other property located in Florida and in other states (such other property being further described on Exhibit C and being referred to as the "Other Property"). The Florida collateral is located in Brevard, Volusia and Manatee Counties, and three (3) separate mortgages (the Florida Mortgages") encumbering three (3) properties are being executed and delivered by Mortgagor for simultaneous recording in the various Florida counties described above. The total indebtedness secured by this Mortgage equals \$50,000,000.00, as evidenced by one (1) promissory note in the aggregate original principal amount of \$50,000,000.00 (the "Note"). The Note was made, executed and delivered outside the State of Florida. The value of the Florida property encumbered by the Florida Mortgages equals \$27,200,000.00. The aggregate value of all other property securing the loan and located outside the State of Florida equals \$50,400,000.00. Thus, the total aggregate value of all property securing the loan equals \$77,600,000.00. The property encumbered by the Florida Mortgages and located in Florida represents thirty-five (35%) percent [ $\$27,200,000.00 / \$77,600,000.00$ ] of the total value of all property securing the loan. In accordance with Florida Statutes, Section 201.08, and Florida Administrative Code, Rule 12B-4.053(32)(b), documentary stamp tax is computed based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all mortgaged property (which, in this case, equals \$17,500,000.00). Accordingly, documentary stamp tax in the amount of \$61,250.00 is due upon the recording of the Florida Mortgages in the Florida counties listed above. Pursuant to Chapter 199, Florida Statutes, non-recurring intangible personal property tax is computed and payable based upon that portion of the indebtedness which bears the same relation as the value of the mortgaged property located in Florida bears to the total value of all mortgaged property, which, in this case, equals [ $\$50,000,000.00 \times (\$27,200,000.00 / \$77,600,000.00)$ ]. Thus, non-recurring intangible personal property tax in the amount of \$35,000.00 is due and payable upon recording of the Florida Mortgages in the Florida counties listed above.

EXHIBIT B

EXHIBIT C

DESCRIPTION OF OTHER PROPERTY

Exhibit C to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Other Property referred to in this Mortgage is described as follows:

CABANA PROPERTY

The Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada.

EXCEPTING THEREFROM the described premises:

The North Forty feet (40.00') and the East Forty feet (40.00') of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada; together with the certain spandrel area in the Northeast Quarter corner thereof, also being the Southwest corner of the intersection of East Twain Avenue and Cabana Drive, bounded as follows: on the North by the South line of the North Forty feet (40.00'); on the East by the West line of the East Forty feet (40.00'), and on the Southwest by the arc of a curve concave Southwesterly, having a radius of Twenty five feet (25.00') that is tangent to the South line of said North Forty feet (40.00') is tangent to the South line of said North Forty feet (40.00') and tangent to the West line of said Forty feet (40.00').

ALSO BEING described as that portion of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Northeast Quarter (NE 1/4) of the Southwest Quarter of said Section 16; thence South 01 degree 55' 58" East a distance of 40.01 feet to a point on the Southerly right of way line of Twain Avenue (80.00 feet wide) said point being the TRUE POINT OF BEGINNING; thence North 89 degrees 09' 31" East, along said Southerly right of way of Twain Avenue a distance of 1259.02 feet to a point of tangent curve concave to the Southwest having a radius of 25.00 feet; thence Southeasterly along the arc of said curve through a central angle of 89 degrees 28' 02" an arc length of 39.04 feet to a point on the Westerly right of way line of Cabana Drive (80.00 feet wide); thence South 01 degree 22' 27" East along said Westerly right of way line of Cabana Drive a distance of 1238.26 feet; thence South 88 degrees 17' 57" West a distance of 1271.25 feet; thence North 01 degree 55' 58" West a distance of 1282.27 feet to the TRUE POINT OF BEGINNING.

EXHIBIT C

WOODLAND HILLS PROPERTY

Northwest 1/4 of the Southeast 1/4 and the North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West of the 6th P.M., County of Adams, State of Colorado,

EXCEPT portions dedicated for County roads;

AND EXCEPT that part described as follows:

Beginning at the center of Section 21, Township 2 South, Range 68 West of the 6th P.M., thence South 89 degrees 53 minutes East along the North line of the Southeast 1/4, Section 21, a distance of 40.00 feet; thence South parallel to the West line of the Southeast 1/4 of said Section, 30.00 feet to the True Point of Beginning; thence South 89 degrees 53 minutes East parallel to the North line of the Southeast 1/4 a distance of 180.00 feet; thence South parallel to the West line of the Southeast 1/4, 150.00 feet; thence North 89 degrees 53 minutes West parallel to the North line of the Southeast 1/4, 180.00 feet; thence North parallel to the West line of the Southeast 1/4, 150.00 feet to the True Point of Beginning, being in the City of Thornton, County of Adams, State of Colorado;

AND EXCEPT that part described as follows:

A part of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West, of the 6th P.M., County of Adams, State of Colorado, described as follows:  
Beginning at a point 220.00 feet East and 180.00 feet South of the Northwest corner of said Southeast 1/4; thence Southerly and parallel to the West line of said Southeast 1/4 a distance of 393.93 feet; thence on an angle to the right of 90 degrees a distance of 180.00 feet to a point 40 feet East of the West line of said Southeast 1/4; thence on an angle to the right of 90 degrees and parallel to said West line a distance of 394.76 feet to a point 180.00 feet South of the North line of said Southeast 1/4; thence on an angle to the right 90 degrees 16 minutes 40 seconds and parallel to said North line a distance of 180.00 feet to the Point of Beginning, County of Adams, State of Colorado.

EXHIBIT C

WINDMILL PROPERTY

PARCEL A:

Begin at the Northwest corner of the Southeast 1/4 of the Northeast 1/4 of Section 16, Township 35 South, Range 18 East, Manatee County, Florida; thence South 00(degrees) 14' 17" East, 1327.25 feet to the Southwest corner of the Southeast 1/4 of the Northeast 1/4 of the aforementioned Section 16; thence North 89(degrees) 58' 09" East, 1322.53 feet to the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of Section 16; thence South 00(degrees) 24' 10" East, 137.28 feet; thence North 89(degrees) 40' 44" East, 1269.21 feet; thence North 00(degrees) 15' 02" West, 137.28 feet; thence North 89(degrees) 40' 56" East, 42.00 feet along the South line of the Southwest 1/4 of the Northwest 1/4 of Section 15, Township 35 South, Range 18 East, Manatee County, Florida to a point, said point being the Southwest corner of the Easterly 8.00 feet of the Southwest 1/4 of the Northwest 1/4 of Section 15; thence North 00(degrees) 15' 02" West along the West line of said Easterly 8.00 feet, 529.06 feet; thence North 89(degrees) 54' 48" West, 352.77 feet; thence North 83(degrees) 03' 14" West, 41.33 feet; North 89(degrees) 58' 10" West, 384.29 feet; thence North 64(degrees) 05' 35" West, 45.06 feet; thence North 89(degrees) 49' 37" West, 69.63 feet; thence North 00(degrees) 27' 02" West, 39.77 feet; thence South 89(degrees) 57' 27" West, 229.20 feet; thence South 00(degrees) 34' 37" West, 52.86 feet; thence South 89(degrees) 50' 04" West, 69.88 feet; thence North 68(degrees) 46' 00" West, 42.84 feet; thence North 89(degrees) 02' 58" West, 70.09 feet; thence North 00(degrees) 46' 23" West, 36.15 feet; thence South 89(degrees) 58' 50" West, 204.28 feet; thence South 01(degrees) 06' 03" West, 34.82 feet; thence North 89(degrees) 55' 45" West, 69.61 feet; thence North 61(degrees) 14' 43" West, 46.29 feet; thence North 89(degrees) 47' 56" West, 49.68 feet; thence North 01(degrees) 06' 00" West, 14.20 feet; thence South 89(degrees) 37' 41" West, 244.94 feet; thence North 14(degrees) 02' 42" West, 20.66 feet; thence North 00(degrees) 04' 49" East, 50.12 feet; thence North 07(degrees) 13' 20" West, 40.26 feet; thence North 00(degrees) 29' 42" West, 229.78 feet; thence North 89(degrees) 19' 18" East, 21.87 feet; thence North 00(degrees) 01' 05" East, 69.28 feet; thence North 16(degrees) 42' 43" West, 41.53 feet; thence North 00(degrees) 18' 37" East, 70.77 feet; thence North 90(degrees) 00' 00" West, 443.35 feet; thence North 02(degrees) 07' 48" West, 80.67 feet; thence North 25(degrees) 58' 34" East, 33.85 feet; thence North 00(degrees) 07' 24" East, 93.96 feet; thence South 89(degrees) 59' 49" West, 295.60 feet to the Point of Beginning.

PARCEL B:

Perpetual non-exclusive rights-of-way and easements as contained in Agreements recorded January 13, 1939, in Deed Book 159, page 331, and rerecorded February 16, 1939, in Deed Book 160, page 23; recorded October 30, 1939, in Deed Book 164, page 340; and recorded May 31, 1974, in Official Records Book 673, page 646, all of the Public Records of Manatee County, Florida.

EXHIBIT C



PICKWICK VILLAGE PROPERTY

PARCEL A:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East, also a portion of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida being more particularly described as follows:

As a point of reference begin at the Southwest corner of Section 6, Township 16 South, Range 33 East, thence along the South line of Section 6 South 89 degrees 35 minutes 25 seconds East a distance of 3300.00 feet to the Point of Beginning; thence North 00 degrees 24 minutes 35 seconds East a distance of 330.00 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 200.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 612.36 feet to a point on the Southerly right-of-way line of Clyde Morris Blvd. (a 100.00 foot right-of-way as now laid out and used); thence South 41 degrees 06 minutes 50 seconds East along the Southerly right-of-way line of said Clyde Morris Blvd. a distance of 1067.45 feet to a point on the East line of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East; thence South 00 degrees 24 minutes 35 seconds West along the said East line of the West one-half of the Northeast one-quarter of said Section 7 a distance of 2370.82 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 1320.00 feet to a point in the West line of the West one-half of the Northeast one-quarter of Section 7; thence North 00 degrees 24 minutes 35 seconds East along the West line of the West one-half of the Northeast one-quarter of Section 7 a distance of 1650.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 990.00 feet to the Point of Beginning of this description.

PARCEL B:

A portion of the Northwest one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows: As a point of reference, commence at a concrete monument marking the Northwest corner of Willow Run Subdivision, Unit 2, as per map recorded September 17, 1979, in Map Book 36, Pages 16 and 17 of the Public Records of Volusia County, Florida; thence run North 00 degrees 41 minutes 47 seconds West along a Northerly extension of the Westerly line of said Willow Run Subdivision, Unit 2, a distance of 230.08 feet to a point in the North line of 230.00 foot Florida Power and Light Company right-of-way as described in instrument recorded October 5, 1973, in Official Records Book 1664, Pages 448-450, of the Public Records of Volusia County, Florida, said point also being in the Southerly line of Pickwick Village Mobile Home Park, an unrecorded subdivision; thence run South 89 degrees 35 minutes 24 seconds West along the North line of said Florida Power and Light Company right-of-way, being also the Southerly line of Pickwick Village, a distance of 1.13 feet to a concrete monument marking the Southwest corner of said Pickwick Village; thence North 00 degrees 24 minutes 10 seconds West, a distance of 400.00 feet to the Point of Beginning; thence North 89 degrees 45 minutes 45 seconds West, a distance of 440.02 feet to the center line of an 80.00 foot drainage ditch easement as described in instrument

recorded June 28, 1966, in Official Records Book 847, Pages 429 through 444, of the Public Records of Volusia County, Florida; thence North 00 degrees 24 minutes 10 seconds West along the center line of said drainage ditch easement, a distance of 1250.34 feet; thence South 89 degrees 45 minutes 45 seconds East, a distance of 440.02 feet to a point on the Westerly line of said Pickwick Village Subdivision; thence South 00 degrees 24 minutes 10 seconds East along said Westerly line, a distance of 1250.34 feet to the Point of Beginning.

SAID PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East; also a portion of the West one-half of the Northeast one-quarter and a portion of the Northwest one-quarter, all lying in Section 7, Township 16 South, Range 33 East in Volusia County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Section 6, Township 16 South, Range 33 East and run South 89(degrees) 35' 25" East along the South line of the Southwest one-quarter a distance of 2635.46 feet to the Southwest corner of the Southeast one-quarter of said Section 6; thence North 01(degrees) 17' 05" East along the West line of the Southeast one-quarter of said Section 6 a distance of 328.72 feet to an iron pipe labeled LS 2048 and the Point of Beginning of this description; from said Point of Beginning, continue North 01(degrees) 17' 05" East along the West line of the Southeast one-quarter a distance of 201.23 feet to an iron pipe labeled LS 2048; thence South 89(degrees) 35' 25" East, 619.16 feet to an iron pipe labeled LS 2048, said point being on the Southwesterly right-of-way line of Clyde Morris Boulevard; thence South 40(degrees) 56' 13" East along the Southwesterly right-of-way line of said Clyde Morris Boulevard a distance of 1061.80 feet to an iron pipe labeled LS 2048, said point being on the East line of the West one-half of the Northeast one-quarter of the aforementioned Section 7, Township 16 South, Range 33 East; thence South 00(degrees) 34' 32" West along the East line of the West one-half of the Northeast one-quarter of said Section 7, a distance of 2362.20 feet to an iron pin labeled LB 707, said point being on the North line of the 230 foot wide Florida Power and Light Company right-of-way, as described in Official Records Book 1664, Pages 448, 449, and 450 of the Public Records of Volusia County, Florida; thence North 89(degrees) 13' 53" West along the North line of the 230 foot wide Florida Power and Light Company right-of-way a distance of 1321.12 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence North 00(degrees) 23' 35" East along the West line of the West one-half of the Northeast one-quarter a distance of 400.00 feet to an iron pipe labeled LS 2048; thence North 89(degrees) 13' 53" West, 440.02 feet to an iron pipe labeled LS 2048, said point being the centerline of a drainage ditch; thence North 00(degrees) 23' 35" East along said drainage ditch centerline a distance of 1250.34 feet to an iron pipe labeled LS 2048; thence South 89(degrees) 13' 53" East, 440.02 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence South 00(degrees) 23' 35" West along the West line of the West one-half of the Northeast one-quarter a distance of 12.16 feet to an iron pipe labeled LS 2048; thence South 89(degrees) 27' 21" East, 661.65 feet to an iron pipe labeled LS 2048; thence North 00(degrees) 25' 26" East, 984.46 feet to an iron pipe labeled LS 2048; thence North 01(degrees) 14' 43" East, 328.45 feet to a nail in disk in pavement labeled LB 707; thence North 89(degrees) 33' 59" West, 661.95 feet to the Point of Beginning.

EXHIBIT C

APOLLO VILLAGE PROPERTY

That portion of the Southwest quarter of Section 21, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 21;

THENCE North 00(degrees) 34' 15" East (assumed bearing) along the West line of said Section 21, a distance of 786.55 feet;

THENCE South 89(degrees) 25' 45" East 65.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89(degrees) 25' 45" East 126.95 feet;

THENCE North 87(degrees) 23' 37" East 116.40 feet;

THENCE South 00(degrees) 30' 51" West 124.13 feet to the Northeast corner of the property described in Docket 10568, page 613, records of Maricopa County, Arizona;

THENCE South 00(degrees) 34' 44" West along the East line of said property 156.09 feet to a point on a line 500.00 feet North and parallel to the South line of said Section 21;

THENCE North 88(degrees) 16' 15" East along said line 530.61 feet to the Northeast corner of the property described in Docket 6785, page 268, records of Maricopa County, Arizona;

THENCE South 00(degrees) 27' 31" West 435.31 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;

THENCE North 88(degrees) 16' 15" East along said line 51.93 feet;

THENCE North 00(degrees) 20' 35" East 127.50 feet;

THENCE North 02(degrees) 21' 45" West 308.14 feet;

THENCE North 88(degrees) 15' 20" East 445.27 feet;

THENCE North 21(degrees) 52' 10" East 195.00 feet;

THENCE South 89(degrees) 39' 20" East 285.57 feet to a point on the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE North 00(degrees) 20' 40" East along said West line 807.45 feet to a point on the Southerly line of the property described in Docket 15563, page 420, records of Maricopa County, Arizona;

THENCE South 86(degrees) 58' 05" West along said South line and the South line of the property described in Docket 15133, page 167, records of Maricopa County, Arizona, 1,366.81 feet to a point 309.53 feet East of the West line of said Section 21;

THENCE South 00(degrees) 37' 00" West 616.40 feet (620.95 feet, record) to the North line of the property described in Docket 6099, page 277, records of Maricopa County, Arizona;

THENCE North 89(degrees) 25' 45" West along said North line 243.43 feet to a point on a line 65.00 feet East of and parallel to the West line of said Section 21;

THENCE South 00(degrees) 34' 15" West along said line 55.48 feet to the POINT OF BEGINNING;

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88(degrees) 16' 15" East (an assumed bearing) along the South line of said Section 21, a distance of 840.11 feet;

THENCE North 00(degrees) 27' 31" East 65.05 feet to the POINT OF BEGINNING;

THENCE continuing North 00(degrees) 27' 31" East along the East line of the property described in Docket 6785, page 259, records of Maricopa County, Arizona, 435.31 feet;

THENCE North 87(degrees) 25' 34" East 36.52 feet;

THENCE South 02(degrees) 21' 45" East 308.14 feet;

THENCE South 00(degrees) 20' 35" West 127.50 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;

THENCE South 88(degrees) 16' 15" West along said line 51.93 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88(degrees) 08' 29" East (North 88(degrees) 16' 15" East, record) along the South line of said Section 21, a distance of 1,684.02 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE North 00(degrees) 06' 45" East 669.32 feet ( North 00(degrees) 20' 40" East 669.45, record) along said West line to the POINT OF BEGINNING;

THENCE North 89(degrees) 47' 06" West (North 89(degrees) 39' 20" West, record) 115.00 feet;

THENCE North 16(degrees) 08' 00" East 325.00 feet;

THENCE North 52(degrees) 29' 10" East 31.95 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE South 00(degrees) 06' 45" West (South 00(degrees) 20' 40" West, record) along said West line 332.09 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88(degrees) 16' 15" East along the South line of said Section 21, a distance of 892.17 feet;

THENCE North 00(degrees) 20' 35" East 65.04 feet to a point on a line parallel to and 65.00 feet North of the South line of said Section 21;

THENCE continuing North 00(degrees) 20' 35" East 127.50 feet;

THENCE North 02(degrees) 21' 45" West 308.14 feet;

THENCE North 88(degrees) 15' 20" East 445.27 feet;

THENCE North 21(degrees) 52' 10" East 195.00 feet;

THENCE South 89(degrees) 39' 20" East 21.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89(degrees) 39' 20" East 55.00 feet;

THENCE North 00(degrees) 20' 40" East 40.00 feet;

THENCE North 89(degrees) 39' 20" West 55.00 feet;

THENCE South 00(degrees) 20' 40" West 40.00 feet to the POINT OF BEGINNING.

EXHIBIT C

CASA DEL SOL III PROPERTY

PARCEL NO. 1:

That part of Lot 3, A Subdivision of the East half of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, according to Book 11 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 24;

THENCE West along the South line of said Section 24, a distance of 1,320.54 feet;

THENCE North 01(degrees) 38' 30" East 55.02 feet to a point on a line that is 55.00 feet North of and parallel to said South line said line being the North line of Peoria Avenue and the TRUE POINT OF BEGINNING;

THENCE West along said North line 627.98 feet;

THENCE North 45(degrees) 44' 20" East 28.64 feet;

THENCE North 01(degrees) 28' 40" East 307.70 feet;

THENCE North 45(degrees) 00' 00" East 149.61 feet;

THENCE North 32(degrees) 31' 59" West 76.22 feet;

THENCE North 01(degrees) 38' 30" East 420.00 feet;

THENCE North 89(degrees) 57' 50" East 11.71 feet;

THENCE North 01(degrees) 38' 30" East 133.00 feet to a point on a non-tangent curve concave to the East the center of which bears North 80(degrees) 00' 01" East having a radius of 1,430.40 feet and an interior angle of 23(degrees) 03' 59";

THENCE Northeasterly along said curve 575.86 feet;

THENCE North 01(degrees) 38' 30" East 84.00 feet;

THENCE North 89(degrees) 57' 50" East 738.38 feet;

THENCE South 01(degrees) 38' 30" West 1,407.21 feet;

THENCE West 200.00 feet;

THENCE South 01(degrees) 38' 30" West 300.11 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A perpetual easement for the installation and maintenance of private utility lines and drainage, as created in instrument recorded in Docket 12335, page 1213, records of Maricopa County, Arizona, being 12.00 feet in width, being 6.00 feet on each side of the centerlines described as follows:

BEGINNING at the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE West 1,326.54 feet along the South line of said Section 24;

THENCE North 01(degrees) 38' 30" East 55.00 feet to the TRUE POINT OF BEGINNING;

THENCE North 01(degrees) 38' 30" East 306.11 feet;

THENCE East 206.00 feet to the point of termination; and

EXHIBIT C

BEGINNING at a point which bears North 01(degrees) 38' 30" East 1,757.00 feet and South 89(degrees) 57' 50" West 1,120.55 feet from the Southeast corner of said Section 24;

THENCE South 89(degrees) 57' 50" West 1,498.24 feet to a point on the East line of the West 40.00 feet of the Southeast quarter of said Section 24 and the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 3:

A perpetual easement for irrigation purposes and for the use, construction and maintenance of an irrigation lateral, as created in instrument recorded in Docket 12335, page 1215, records of Maricopa County, Arizona, being 5.00 feet in width, being 2.50 feet on each side of the centerline described as follows:

BEGINNING at a point which bears North 01(degrees) 38' 30" East 1,760.50 feet and South 89(degrees) 57' 50" West 55.00 feet from the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE South 89(degrees) 57' 50" West 1,833.37 feet to the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 4:

A portion of the Southeast quarter of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

A strip of land 6.00 feet in width located West of and parallel to the Easterly boundary line of that certain Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona, described as follows:

COMMENCING at the South quarter corner of Section 24;

THENCE North 01(degrees) 28' 40" East along the West line of the Southeast quarter of said Section 24, 1,760.87 feet to a point on the South line of Lot 2 as shown in Book 11 of Maps, page 30, records of Maricopa County, Arizona;

THENCE North 89(degrees) 55' 44" East along said South line 794.70 feet to a point 6.00 feet West of and parallel to said Easterly boundary line of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the POINT OF BEGINNING;

THENCE continuing North 89(degrees) 55' 44" East, along said South line, 6.00 feet to the Northeast corner of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the Northwest corner of Quit Claim Deed Recorded in Document No. 95-388831, records of Maricopa County, Arizona;

THENCE South 01(degrees) 38' 36" West, along the Easterly boundary line of said Special Warranty Deed and the Westerly boundary line of said Quit Claim Deed, 84.00 feet to the beginning of a non-tangent curve concave Easterly and having a radial bearing of North 76(degrees) 55' 57" West;

THENCE Southerly along said curve and along said Easterly and Westerly boundary lines and through a central angle of 19(degrees) 06' 47" an arc length of 477.16 feet;

EXHIBIT C

THENCE South 89(degrees) 55' 44" West to a point 6.00 feet West of and parallel to said Easterly and Westerly boundary lines to the beginning of a curve concave Easterly and having a radius of 1,436.40 feet;

THENCE Northerly along said curve 6.00 feet West of and parallel to said Easterly and Westerly boundary lines through a central angle of 19(degrees) 03' 50" an arc length of 477.93 feet;

THENCE North 01(degrees) 38' 36" East 6.00 feet West of and parallel to said Easterly and Westerly boundary lines 83.22 feet to the POINT OF BEGINNING.

EXHIBIT C

Recording requested by and when recorded return to:

WELLS FARGO BANK, N.A.  
Commercial Mortgage Origination  
MAC #A0194-093  
45 Fremont Street, 9th Floor  
San Francisco, California 94105

Attention: CMO Loan Admin.  
Loan No.: 31-0900553R  
Property Name: Pickwick Village

Prepared by:

Lee M. Smolen  
Sidley Austin Brown & Wood  
10 South Dearborn  
Chicago, Illinois 60603

MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND  
LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING)

July 31, 2001

THIS MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) (the "Mortgage") is made and entered into by and among MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Mortgagor"), having an address at c/o Manufactured Home Communities, Inc., Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606, and WELLS FARGO NATIONAL BANK, NATIONAL ASSOCIATION ("Lender" or "Mortgagee").

THIS MORTGAGE EVIDENCES A MULTI-STATE LOAN WHICH IS SECURED BY REAL PROPERTY LOCATED OUTSIDE THE STATE OF FLORIDA AND REAL PROPERTY LOCATED IN BREVARD, VOLUSIA, AND MANATEE COUNTIES, FLORIDA. FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$61,250.00 AND FLORIDA NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX IN THE AMOUNT OF \$35,000.00 ARE BEING PAID UPON RECORDATION OF ONE OF THE FLORIDA MORTGAGES IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. ATTACHED HERETO AS EXHIBIT B IS A DESCRIPTION OF THE CALCULATION OF LIABILITY FOR DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE PERSONAL PROPERTY TAX.



R E C I T A L S

- A. MHC STAGECOACH, L.L.C., a Delaware limited liability company ("Borrower") proposes to borrow from Mortgagee, and Mortgagee proposes to lend to Borrower the principal sum of FIFTY MILLION AND NO/100THS DOLLARS (\$50,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Mortgage, payable to the order of Mortgagee in the principal amount of the Loan. The maturity date of the Loan is September 1, 2011.
- B. The loan documents include this Mortgage, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE I. MORTGAGE

1.1 GRANT. For the purposes of and upon the terms and conditions of this Mortgage, Mortgagor irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest to Mortgagee, its successors and assign, with right of entry and possession, all of Mortgagor's right, title and interest, whether now owned or hereafter acquired, in or to all of the following:

(a) That real property ("Land") located in Port Orange, county of Volusia, state of Florida, and more particularly described on Exhibit A attached hereto;

(b) All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, all sewer capacity rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;

(c) All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;

(d) All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;

(e) All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;

(f) All additions and accretions to the property described above;

(g) All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Mortgagor in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and

(h) All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE II. OBLIGATIONS SECURED

2.1 OBLIGATIONS SECURED. Mortgagor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

(a) Full and punctual payment to Mortgagee of all sums at any time owing under the Note;

(b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage, including, without limitation, indemnification obligations and advances made to protect the Property;

(c) Payment and performance of all additional covenants and obligations of Borrower and Mortgagor under the Loan Documents;

(d) Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Mortgage recites are secured hereby;

(e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage;

(f) All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 FUTURE ADVANCES. This Mortgage is given to secure not only the Secured Obligations, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee or the holder hereof, or otherwise as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Secured Obligations that may be so secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made under this Mortgage for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements as provided for

herein, plus any increases in the principal balance as the result of negative amortization or deferred interest, if any. It is agreed that any additional sum or sums advanced by Mortgagee pursuant to the terms hereof shall be equally secured with and have the same priority as the original Secured Obligations and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes or other guaranties of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional promissory note or guaranty or promissory notes or guaranties executed and delivered pursuant to this paragraph shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this paragraph.

2.3 OBLIGATIONS. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.4 MATURITY DATE. The maturity date of the Note is September 1, 2011.

2.5 INCORPORATION. All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time.

#### ARTICLE III. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 ASSIGNMENT. Mortgagor irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 GRANT OF LICENSE. Notwithstanding the terms contained in Section 3.1, Mortgagee confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee may collect

and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. Upon Mortgagor's cure of the Default, Mortgagee shall re-confer upon Mortgagor a revocable license to collect and retain the Payments as they become due and payable, until the occurrence of a Default. All Payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases, upon notice of a Default from Mortgagee, to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation or any other obligation of Borrower, Mortgagor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

3.3 EFFECT OF ASSIGNMENT. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (e) the exercise of or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (f) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

#### 3.4 COVENANTS.

(a) ALL LEASES. Mortgagor shall, at Mortgagor's sole cost and expense:

(i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;

(ii) use reasonable efforts to keep the Property leased at all times to tenants whom Mortgagor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);

(iii) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease and all amendments thereto and waivers thereof; and

(iv) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and specific subordinations of any Lease to this Mortgage, in form and substance satisfactory to Mortgagee.

Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;

(vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;

(vii) except upon Mortgagee's request, execute any assignment of landlord's interest in any Lease; or

(viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Mortgagor shall deposit with Mortgagee any sums received by Mortgagor in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Mortgagor with respect to any Lease which is less than \$50,000 shall be payable to Mortgagor. All such sums received by Mortgagee with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12) and shall be deposited by Mortgagee into a pledged account in accordance with Section 6.12. If no Default exists, Mortgagee shall release such Impounds to Mortgagor from time to time as necessary to pay or reimburse Mortgagor for such tenant improvements, brokerage commissions and other leasing costs as may be required to re-tenant the affected space; provided, however, Mortgagee shall have received and approved each of the following for each tenant for which such costs were incurred; (1) Mortgagor's written request for such release, including the name of the tenant, the location and net rentable area of the space and a description and cost breakdown of the tenant improvements or other leasing costs covered by the request; (2) Mortgagor's certification that any tenant improvements have been completed lien-free and in a workmanlike manner; (3) a fully executed Lease, or extension or renewal of the current Lease; (4) an estoppel certificate executed by the tenant including its acknowledgement that all tenant improvements have been satisfactorily completed; and (5) such other information with respect to such costs as Mortgagee may require. Following the re-tenanting of all affected space (including, without limitation, the completion of all tenant improvements), and provided no Default exists, Mortgagee shall release any remaining such Impounds relating to the affected space to Mortgagor. Mortgagor shall construct all tenant improvements in a workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations.

(b) MAJOR LEASES. Mortgagor shall, at Mortgagor's sole cost and expense, give Mortgagee prompt written notice of any material default by landlord or tenant under any

Major Lease (as defined below). Unless consented to in writing by Mortgagee or otherwise permitted under any other provision of the Loan Documents, Mortgagor shall not:

(i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;

(ii) materially reduce any rent or other sums due from the tenant under any Major Lease;

(iii) terminate or materially modify or amend any Major Lease; or

(iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Mortgagee; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Mortgagee. Mortgagor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.40 as well as by the provisions of this Section.

(c) FAILURE TO DENY REQUEST Mortgagee's failure to deny any written request by Mortgagor for Mortgagee's consent under the provisions of Sections 3.4(a) or 3.4(b) within 10 Business Days after Mortgagee's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Mortgagee's consent to such request.

3.5 RIGHT OF SUBORDINATION. Mortgagee may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Mortgage to any Lease.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 SECURITY INTEREST. Mortgagor grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of Mortgagor's right, title and interest in and to the following described personal property in which Mortgagor now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Mortgagor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under the Florida Uniform Commercial Code (the "UCC"), this Mortgage constitutes a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended and recodified from time to time, this Mortgage shall constitute a fixture filing recorded in the real estate records. Notwithstanding the foregoing, nothing herein shall be deemed to create any lien or interest in favor of Mortgagee under this Mortgage in any such Collateral which is not a fixture, and the purpose of this Article IV is to create a fixture filing under Florida Statutes Section 679.313 and 679.402, as amended or recodified from time to time.

4.2 COVENANTS. Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee reasonably deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Mortgagee at least 30 days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder.

4.3 RIGHTS OF MORTGAGEE. In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and

preserve the Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Collateral during normal business hours upon reasonable prior written notice, provided, however, that such notice shall not be required in the event of an emergency. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

4.4 ADDITIONAL RIGHTS OF MORTGAGEE UPON DEFAULT. Upon the occurrence of a Default, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

(a) DISPOSITION OF COLLATERAL. Mortgagee may: (i) upon written notice, require Mortgagor to assemble the Collateral and make it available to Mortgagee at a place reasonably designated by Mortgagee; (ii) without prior notice (to the extent permitted by law), enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and

(b) OTHER RIGHTS. Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee reasonably deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may reasonably deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of the Collateral.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 Business Days prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Mortgagee may from time to time elect..

4.5 POWER OF ATTORNEY. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral, and upon a Default, take



any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

#### ARTICLE V. REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES. Mortgagor represents and warrants to Mortgagee that, to Mortgagor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

(a) LEGAL STATUS. Mortgagor and Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Mortgagor and Borrower are organized. Mortgagor and Borrower are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.

(b) PERMITS. Mortgagor and Borrower possess all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged in compliance with applicable law.

(c) AUTHORIZATION AND VALIDITY. The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Mortgagor, Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.

(d) VIOLATIONS. The execution, delivery and performance by Mortgagor and Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Mortgagor or Borrower is a party or by which Mortgagor or Borrower is bound.

(e) LITIGATION. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Mortgagor or Borrower other than those previously disclosed in writing by Mortgagor or Borrower to Mortgagee.

(f) FINANCIAL STATEMENTS. The financial statements of Mortgagor and Borrower, of each general partner (if Mortgagor or Borrower is a partnership), of each member (if Mortgagor or Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Mortgagor or Borrower to Mortgagee: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan, or other accounting standards approved by Mortgagee. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged,

pledged or encumbered except as previously disclosed in writing by Mortgagor or Borrower to Mortgagee and approved in writing by Mortgagee.

(g) REPORTS. All reports, documents, instruments and information delivered to Mortgagee in connection with the Loan: (i) are correct in all material respects and sufficiently complete to give Mortgagee accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.

(h) INCOME TAXES. There are no material pending assessments or adjustments of Mortgagor's or Borrower's income tax payable with respect to any year.

(i) SUBORDINATION. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.

(j) TITLE. Mortgagor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, previously disclosed to Mortgagee by Mortgagor in a writing specifically referring to this representation and warranty.

(k) MECHANICS' LIENS. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Mortgage, other than those (if any) previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage.

(l) ENCROACHMENTS. Except as shown in the survey, if any, previously delivered to Mortgagee, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.

(m) LEASES. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. Except as disclosed on a rent roll provided to Mortgagee prior to the date hereof, no rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.

(n) COLLATERAL. Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Mortgagee by Mortgagor in writing specifically referring to this representation and warranty. Mortgagor's chief

executive office (or principal residence, if applicable) is located at the address shown on page one of this Mortgage. Mortgagor is an organization organized solely under the laws of the State of Delaware. All organizational documents of Mortgagor delivered to Mortgagee are complete and accurate in every respect. Mortgagor's legal name is exactly as shown on page one of this Mortgage.

(o) CONDITION OF PROPERTY. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Mortgagee, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.

(p) HAZARDOUS MATERIALS. Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Mortgagee, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) in violation of Hazardous Materials Laws (as hereinafter defined) except as otherwise previously disclosed in writing by Mortgagor to Mortgagee.

(q) HAZARDOUS MATERIALS LAWS. The Property complies with all Hazardous Materials Laws.

(r) HAZARDOUS MATERIALS CLAIMS. There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).

(s) WETLANDS. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(t) COMPLIANCE WITH LAWS. All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U. S. C. Section 12101 et seq.) have been satisfied or complied with. Mortgagor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.

(u) PROPERTY TAXES AND OTHER LIABILITIES. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

(v) CONDEMNATION. There is no proceeding pending or threatened for the total or partial condemnation of the Property.

(w) HOMESTEAD. There is no homestead or other exemption available to Mortgagor which would materially interfere with the right to sell the Property or the right to foreclose this Mortgage.

(x) SOLVENCY. None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors

of Mortgagor, and Mortgagor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Mortgagor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Mortgagor is able to pay its debts as they become due.

(y) SEPARATE TAX PARCEL(S). The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL V SPE). Mortgagor hereby represents, warrants and covenants to Mortgagee that with respect to both Mortgagor and MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of Mortgagor:

(a) each such entity was organized solely for the purpose of (i) owning the Properties (as defined in the Note); (ii) acting as a general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(b) each such entity has not engaged and will not engage in any business unrelated to (i) the ownership of the Properties; (ii) acting as general partner of a limited partnership which owns the Properties; or (iii) acting as a managing member of a limited liability company which owns the Properties;

(c) each such entity has not had and will not have any assets other than the Properties (and personal property incidental to the ownership and operation of the Properties) or its partnership or membership interest in the limited partnership or limited liability company which owns the Properties, as applicable;

(d) each such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interest, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or limited partnership agreement, as applicable;

(e) if any such entity is a limited partnership, all of its general partners are corporations that satisfy the requirements set forth in this Section 5.2;

(f) if any such entity is a limited liability company, it has at least one managing member that is a corporation that satisfies the requirements set forth in this Section 5.2;

(g) each such entity, without the unanimous consent of all of its general partners, directors or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(h) each such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan (to the extent it is liable under the terms of the Loan Documents); and (ii) unsecured

trade debt not to exceed \$1,000,000 in the aggregate with respect to Mortgagor or \$10,000 in the aggregate with respect to its managing member, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property (or its interest in Mortgagor, as applicable) and is paid within thirty (30) days from the date incurred;

(i) each such entity has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(j) each such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;

(k) each such entity has maintained and will maintain its books, records, resolutions and agreements as official records;

(l) each such entity (i) has not commingled and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;

(m) each such entity has conducted and will conduct its business in its own name or in a registered trade name;

(n) each such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;

(o) each such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;

(p) each such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;

(q) each such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;

(r) each such entity has not assumed or guaranteed and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;

(s) each such entity has not acquired and will not acquire obligations or securities of its partners, members or shareholders;

(t) each such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and each such entity has used and will use separate stationery, invoices and checks under its own name or under its registered trade name;

(u) each such entity has not pledged and will not pledge its assets for the benefit of any other person or entity;

(v) each such entity has held out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or under its registered trade name and not as a division or part of any other person or entity;

(w) each such entity has not made and will not make loans to any person or entity;

(x) each such entity has not identified and will not identify its partners, members or shareholders, or any affiliates of any of the foregoing, as a division or part of it;

(y) each such entity has not entered into and will not enter into or be a party to, any transaction with its partners, members, shareholders, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements 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;

(z) if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;

(aa) each such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(bb) each such entity has maintained and will maintain adequate capital in light of its contemplated business operations;

(cc) if any such entity is a limited partnership with more than one general partner, its limited partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists;

(dd) if any such entity is a limited liability company, its operating agreement, if any such entity is a limited partnership, its limited partnership agreement, and if any such entity is a corporation, to the full extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and any such entity shall conduct its business and operations in strict compliance with the terms contained therein;

(ee) each such entity will, as a condition to the closing of the Loan, deliver to Mortgagee a nonconsolidation opinion in form and substance acceptable to Mortgagee;

(ff) if any such entity is a corporation, it has maintained and will continue to maintain at least one Independent Director (as hereinafter defined); and

(gg) if any such entity is a corporation, it has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless an Independent Director shall have participated in such vote.

An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the corporation is not, and has not been during the five (5) years

immediately before such individual's appointment as an Independent Director: (i) a stockholder, director, partner, officer or employee of the corporation or its Affiliates; (ii) affiliated with a customer or supplier of the corporation or its Affiliates; or (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the corporation's stock, or (ii) which controls, is controlled by or is under common control with the corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

5.3 COMMERCIAL LOAN. Borrower warrants that the loan evidenced by this Note is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

#### ARTICLE VI. RIGHTS AND DUTIES OF THE PARTIES

6.1 MAINTENANCE AND PRESERVATION OF THE PROPERTY. Mortgagor shall, or shall cause the property manager to: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 0, Mortgagee elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Mortgagee is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Mortgagee reasonably deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Mortgagor shall not, without Mortgagee's prior written consent: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the

Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit physical waste of the Property.

6.2 HAZARDOUS MATERIALS. Without limiting any other provision of this Mortgage, Mortgagor agrees as follows:

(a) PROHIBITED ACTIVITIES. Mortgagor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations ("Hazardous Materials").

The foregoing to the contrary notwithstanding, (i) Mortgagor may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) household and consumer cleaning supplies and other Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants of properties similar to the Property or in similar lines of business on properties similar to the Property.

(b) HAZARDOUS MATERIALS LAWS. Mortgagor shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) NOTICES. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 00); (ii) any knowledge by Mortgagor that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials



Claims") pending or threatened in writing against Mortgagor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated by or with Hazardous Materials.

(d) REMEDIAL ACTION. In response to knowledge of or notification to Mortgagor of the presence of any Hazardous Materials on, under or about the Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required of Mortgagor by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(e) INSPECTION BY MORTGAGEE. Upon reasonable prior notice to Mortgagor (except in the event of an emergency) and during normal business hours, Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.

(f) LEGAL EFFECT OF SECTION. Mortgagor and Mortgagee agree that: (i) this Hazardous Materials Section is intended as Mortgagee's written request for information (and Mortgagor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5, or any other applicable law; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Mortgagee and Mortgagor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736, or any other applicable law.

6.3 COMPLIANCE WITH LAWS. Mortgagor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Mortgagor shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Mortgagor and Borrower to conduct the business(es) in which Mortgagor and Borrower are now engaged.

6.4 LITIGATION. Mortgagor shall promptly notify Mortgagee in writing of any litigation pending or threatened in writing against Mortgagor or Borrower claiming damages in excess of \$100,000 and of all pending or threatened (in writing) litigation against Mortgagor or Borrower if the aggregate damage claims against Mortgagor or Borrower exceed \$500,000.

6.5 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. Mortgagor shall not:  
(a) merge or consolidate with any other entity or permit Borrower to merge or

consolidate with any other entity; (b) make any substantial change in the nature of Mortgagor's business or structure or permit Borrower to make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Borrower to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Mortgagor's assets except in the ordinary course of Mortgagor's business or permit Borrower to sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.

6.6 ACCOUNTING RECORDS. Mortgagor shall maintain and cause Borrower to maintain adequate books and records in accordance with the same accounting standard used by Mortgagor or Borrower to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan or other accounting standards approved by Mortgagee. Mortgagor shall permit and shall cause Borrower to permit any representative of Mortgagee, at any reasonable time and from time to time, upon reasonable prior notice to Mortgagor, to inspect, audit and examine such books and records and make copies of same.

6.7 COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor shall pay to Mortgagee the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Mortgagee's in-house or outside counsel, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property or Collateral required by Mortgagee as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Mortgagor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Mortgagee may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.8 LIENS, ENCUMBRANCES AND CHARGES. Subject to the terms of Section 8.4, Mortgagor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 0. Subject to Mortgagor's right to contest such matters under this Mortgage or as expressly permitted in the Loan Documents, Mortgagor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the

event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

6.9 TAXES AND OTHER LIABILITIES. Mortgagor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Mortgagor shall promptly provide to Mortgagee copies of all tax and assessment notices pertaining to the Property. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.

6.10 INSURANCE COVERAGE. Mortgagor shall insure the Property against loss or damage by fire and such other hazards as Mortgagee shall from time to time require; provided, however, (a) Mortgagee, at Mortgagee's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area, and (b) Mortgagee, at Mortgagee's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Mortgagor shall also carry public liability insurance and such other insurance as Mortgagee may reasonably require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Mortgagee and its successors in interest as a loss payee and requiring at least 30 days prior notice to the holder at termination or cancellation. Mortgagor shall maintain all required insurance throughout the term of the Loan and while any liabilities of Borrower or Mortgagor to Mortgagee under any of the Loan Documents remain outstanding at Mortgagor's expense, with companies, and in substance and form satisfactory to Mortgagee. Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance shall not incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurance; (d) the solvency of any insurer; or (e) the payment of claims.

#### 6.11 INSURANCE AND CONDEMNATION PROCEEDS.

(a) ASSIGNMENT OF CLAIMS. Mortgagor absolutely and irrevocably assigns to Mortgagee all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, Mortgagor shall have the right to adjust, compromise and settle any Claim of \$100,000 or less without the consent of Mortgagee, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Mortgagee. Mortgagee may commence, appear in, defend or prosecute any Claim exceeding \$100,000, and may adjust, compromise and settle all Claims (except for Claims which Mortgagor may settle as provided herein), but shall not be responsible

for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Mortgagee.

(b) APPLICATION OF PROCEEDS; NO DEFAULT. So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Mortgagor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Mortgagee of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) delivery to Mortgagee in form and content acceptable to Mortgagee of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Mortgagee; (cc) a cost breakdown for the work; (dd) if reasonably required by Mortgagee, a payment and performance bond for the work; (ee) evidence of the continuation of substantially all Leases unless consented to in writing by Mortgagee; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security. Mortgagor acknowledges that the specific conditions described above are reasonable.

(c) APPLICATION OF PROCEEDS; DEFAULT. If a Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds or if a Default occurs at any time thereafter, Mortgagee may, at Mortgagee's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

#### 6.12 IMPOUNDS.

(a) POST-DEFAULT IMPOUNDS. If required by Mortgagee at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Mortgagor shall deposit with Mortgagee such amounts ("Post-Default Impounds") on such dates (determined by Mortgagee as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Mortgagee. Mortgagee in its reasonable discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Mortgagee not exceeding 1 year and shall determine the fractional portion thereof that Mortgagor shall deposit with Mortgagee

on each date specified by Mortgagee during such period. If the Post-Default Impounds paid by Mortgagor are not sufficient to pay the related Costs, Mortgagor shall deposit with Mortgagee upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Mortgagor in addition to (but without duplication of) any other Impounds (as defined below).

(b) ALL IMPOUNDS. Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Mortgagee or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Mortgagee shall not be a trustee, special depository or other fiduciary for Mortgagor with respect to such account, and the existence of such account shall not limit Mortgagee's rights under this Mortgage, any other agreement or any provision of law. If no Default exists, Mortgagee shall apply all Impounds to the payment of the related Costs, or in Mortgagee's sole discretion may release any or all Impounds to Mortgagor for application to and payment of such Costs. If a Default exists, Mortgagee may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Mortgagor shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Mortgagor hereunder shall not be diminished by deposits of Impounds made by Mortgagor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Mortgage, Mortgagee may assign all Impounds in its possession to Mortgagee's assignee, whereupon Mortgagee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Mortgagee may elect, Mortgagee shall pay to Mortgagor all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Mortgagor under Section 0, (ii) all insurance premiums payable by Mortgagor under Section 0, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Mortgagor shall deliver to Mortgagee, promptly upon receipt, all bills for Costs for which Mortgagee has required Post-Default Impounds.

6.13 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS. Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14 RIGHT OF INSPECTION. Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior notice to Mortgagor (except that such notice shall not be required in the event of an emergency) for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage. Mortgagee shall use reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property.

6.15 PROHIBITION OF TRANSFER OF PROPERTY OR INTERESTS IN MORTGAGOR.

Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Mortgagee or as otherwise expressly permitted in the Note, Mortgagor shall not cause or permit any sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law ("Transfer") of all or any part of, or all or any direct or indirect interest in, the Property or the Collateral (except for equipment and inventory in the ordinary course of its business), or cause or permit a Transfer of any direct or indirect interest (whether general partnership interest, stock, non-managing member limited liability company interest, trust, or otherwise) in Mortgagor or Borrower. In the event of any Transfer that is not expressly permitted in the Note and is without the prior written consent of Mortgagee, Mortgagee shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 0 herein. Mortgagor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers. Except for Transfers expressly permitted under the Note, Mortgagee's consent to any Transfer may be withheld, conditioned or delayed in Mortgagee's sole and absolute discretion.

6.16 INTENTIONALLY OMITTED.

6.17 INTENTIONALLY OMITTED.

6.18 EXCULPATION. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after a Default or from any other act or omission of Mortgagee in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Mortgagee and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

6.19 INDEMNITY. Without in any way limiting any other indemnity contained in this Mortgage, Mortgagor agrees to defend, indemnify and hold harmless the Mortgagee Group (as hereinafter defined) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Mortgagee Group; (b) this Mortgage; (c) the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (d) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan Documents; (e) any alleged obligation or undertaking on the Mortgagee Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property; or (g) any claim, loss,

damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Mortgagor under Section 0 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Mortgagee Group, or any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Mortgage on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by the Mortgagee Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Mortgage, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Mortgagee Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Mortgagee Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Mortgagee Group", as used herein, shall mean (1) Mortgagee (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Mortgagee, (3) the directors, officers, employees and agents of Mortgagee and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Mortgagor shall pay immediately upon Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Mortgagor agrees to use legal counsel reasonably acceptable to the Mortgagee Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE SATISFACTION AND RELEASE OF THIS MORTGAGE, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20 INTENTIONALLY OMITTED.

6.21 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.

Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.

6.22 SALE OR PARTICIPATION OF LOAN. Mortgagor agrees that Mortgagee may at any time sell, assign, participate or securitize all or any portion of Mortgagee's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Mortgagee with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Mortgagor, any partner or member of Mortgagor, any constituent partner or member of Mortgagor, any guarantor and any nonborrower mortgagor). In the event of any such sale, assignment, participation or securitization, Mortgagee and the other parties to the same shall share in the rights and obligations of Mortgagee set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Mortgagor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Mortgagor to each purchaser, assignee or participant, and Mortgagor shall, within 15 days after request by Mortgagee, (x) deliver an estoppel certificate verifying for the benefit of Mortgagee and any other party designated by Mortgagee the status and the terms and provisions of the Loan in form and substance acceptable to Mortgagee, (y) provide any information, legal opinions or documents regarding Mortgagor, Guarantor (as defined in the Loan Documents), the Property and any tenants of the Property as Mortgagee or Mortgagee's rating agencies may reasonably request, and (z) enter into such amendments or modifications to the Loan Documents or the organizational documents of Mortgagor as may be reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Mortgagor's rights or increasing Mortgagor's obligations. The indemnity obligations of Mortgagor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23 RELEASE. Upon payment in full of the Secured Obligations, and satisfaction of all of the covenants, warranties, undertakings and agreements made in this Mortgage and in the other Loan Documents (including, without limitation, repayment in full of all principal, interest and other amounts owing under the Note) are kept and performed, and all obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, Mortgagee shall release, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any release executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the release may describe the grantee as "the person or persons legally entitled thereto". Mortgagee shall have no duty to determine the rights of persons claiming to be rightful grantees of any release. When the Property has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

6.24 SUBROGATION. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

6.25 MANAGEMENT AGREEMENTS. Without the prior written consent of Mortgagee, Mortgagor shall not terminate, modify, amend or enter into any agreement providing for the management, leasing or operation of the Property. Mortgagor represents,



warrants and covenants that any existing management agreement includes, and any future management agreement entered into by Mortgagor shall include, a provision which provides that the management agreement is automatically terminated upon the transfer of the Property by Mortgagor, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Mortgagee or any other purchaser of the Property. Upon a Default under the Loan Documents or a default under any management agreement then in effect, which default is not cured within any applicable grace or cure period, Mortgagee shall have the right to terminate, or to direct Mortgagor to terminate, such management agreement upon thirty (30) days' written notice and to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee.

#### ARTICLE VII. DEFAULT

7.1 DEFAULT. For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).

(a) OPTIONAL DEFAULT. An "Optional Default" shall occur, at Mortgagee's option, upon the occurrence of any of the following events:

(i) MONETARY. Borrower or Mortgagor shall fail to (aa) pay when due any sums payable under the Loan Documents which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.

(ii) FAILURE TO PERFORM. Borrower or Mortgagor shall fail to observe, perform or discharge any of Borrower's or Mortgagor's obligations, covenants, conditions or agreements, other than Borrower's or Mortgagor's payment obligations, under the Note, this Mortgage or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Mortgagor, as the case may be, by Mortgagee or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower or Mortgagor shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.

(iii) REPRESENTATIONS AND WARRANTIES. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Mortgagor, or a guarantor, if any, to Mortgagee or in connection with any of the Loan Documents, or as an inducement to Mortgagee to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

(iv) CONDEMNATION; ATTACHMENT. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Mortgagee) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower or Mortgagor under any of the Loan Documents, or any material portion of the other assets of Borrower or Mortgagor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

(v) UNINSURED CASUALTY. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Mortgagee) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Mortgagor promptly notifies Mortgagee of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Mortgagor delivers to Mortgagee immediately available funds in an amount sufficient, in Mortgagee's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Mortgagee's receipt of such funds and no Default occurs thereafter, Mortgagee shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Mortgagee shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Mortgage have been satisfied. Mortgagor acknowledges that the specific conditions described above are reasonable.

(vi) ADVERSE FINANCIAL CHANGE. Any material adverse change in the financial condition of Borrower or any general partner or managing member of Borrower, any guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Mortgagee and relied upon by Mortgagee in making the Loan, and which change Mortgagee reasonably determines will have a material adverse effect on (aa) the business, operations or condition of the Property; or (bb) the ability of Borrower or Mortgagor to pay or perform Borrower's or Mortgagor's obligations in accordance with the terms of the Note, this Mortgage, and the other Loan Documents.

(b) AUTOMATIC DEFAULT. An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

(i) VOLUNTARY BANKRUPTCY, INSOLVENCY, DISSOLUTION. (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.

(ii) INVOLUNTARY BANKRUPTCY. Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Mortgagee regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.

(iii) PARTNERS, GUARANTORS. The occurrence of an event specified in clauses (i) or (ii) as to Mortgagor, any general partner or managing member of Borrower or Mortgagor,

or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents.

7.2 ACCELERATION. Upon the occurrence of an Optional Default, Mortgagee may, at its option, declare all sums owing to Mortgagee under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Mortgagee under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 RIGHTS AND REMEDIES. In addition to the rights and remedies in Section 0 above, at any time after a Default, Mortgagee shall have all of the following rights and remedies:

(a) ENTRY ON PROPERTY. With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Mortgagee deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Mortgagor, Borrower or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Mortgagee deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Mortgagee's reasonable judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority hereto, the judgment of Mortgagee being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; (viii) to obtain a court order to enforce Mortgagee's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Mortgagee as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Mortgagee's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;

(b) APPOINTMENT OF RECEIVER. With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Mortgagee's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Mortgagor, Borrower or any guarantor or other person or entity in any manner obligated to Mortgagee under the Loan Documents;

(c) INJUNCTION. To commence and maintain an action or actions in any court of competent jurisdiction to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

(d) FORECLOSURE. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee.

(i) In the event foreclosure proceedings are filed by Mortgagee, all expenses incident to such proceeding, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property or any part thereof.

(ii) Mortgagee may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Mortgage on the remaining portion of the Property foreclosed.

Upon sale of the Property at any foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and

agrees that: (viii) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (xi) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property;

(e) MULTIPLE FORECLOSURES. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;

(f) RIGHTS TO COLLATERAL. To exercise all rights Mortgagee may have with respect to the Collateral under this Mortgage, the UCC or otherwise at law; and

(g) OTHER RIGHTS. To exercise such other rights as Mortgagee may have at law or in equity or pursuant to the terms and conditions of this Mortgage or any of the other Loan Documents.

In connection with any sale or sales hereunder, Mortgagee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

7.4 APPLICATION OF FORECLOSURE SALE PROCEEDS. To the fullest extent permitted by law, proceeds of any sale under this Mortgage shall be applied to the extent funds are so available to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', managers', and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Mortgagee under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

7.5 WAIVER OF MARSHALING RIGHTS. Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations.

7.6 NO CURE OR WAIVER. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Mortgagor has cured all other Defaults hereunder), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

7.7 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Mortgagor agrees to pay to Mortgagee immediately and upon demand all costs and expenses incurred by Mortgagee in the enforcement of the terms and conditions of this Mortgage (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.

7.8 POWER TO FILE NOTICES AND CURE DEFAULTS. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Mortgagor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (b) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

7.9 REMEDIES CUMULATIVE. All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently.

#### ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 ADDITIONAL PROVISIONS. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF MORTGAGOR UNDER THIS

MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

8.2 NON-WAIVER. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Mortgagee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Mortgagee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Mortgagee in exercising any such right or remedy shall be construed to preclude Mortgagee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Mortgagor shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

8.3 CONSENTS, APPROVALS AND EXPENSES. Wherever Mortgagee's consent, approval, acceptance or satisfaction is required under any provision of this Mortgage or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Mortgagee unless such provision expressly so provides. Wherever costs or expenses are required to be paid under any provision of this Mortgage or any of the other Loan Documents, such costs or expenses shall be reasonable.

8.4 PERMITTED CONTESTS. After prior written notice to Mortgagee, Mortgagor may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Mortgagor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Mortgagor pursues the contest diligently, in a manner which Mortgagee determines is not prejudicial to Mortgagee, and does not impair the lien of this Mortgage; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Mortgagee shall not be in any danger of any civil or criminal liability; and (d) if required by Mortgagee, Mortgagor deposits with Mortgagee any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Mortgagee to protect Mortgagee from the consequences of the contest being unsuccessful. Mortgagor's right to contest pursuant to the terms of this provision shall in no way relieve Mortgagor or Borrower of its obligations under the Loan or to make payments to Mortgagee as and when due.

8.5 FURTHER ASSURANCES. Mortgagor shall, upon demand by Mortgagee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the provisions hereof.

8.6 ATTORNEYS' FEES. If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under this Mortgage or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 MORTGAGOR AND MORTGAGEE DEFINED. The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Property, and the term "Mortgagee" includes the original Mortgagee and any future owner or holder, including assignees, pledgees and participants, of the Note or any interest therein.

#### 8.8 DISCLAIMERS.

(a) RELATIONSHIP. The relationship of Mortgagor and Mortgagee under this Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; and Mortgagee neither undertakes nor assumes any responsibility or duty to Mortgagor or to any third party with respect to the Property. Notwithstanding any other provisions of this Mortgage and the other Loan Documents: (i) Mortgagee is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Mortgagor, and Mortgagee does not intend to ever assume such status; (ii) Mortgagee's activities in connection with this Mortgage and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Mortgagee does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Mortgagor.

(b) NO LIABILITY. Mortgagee shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Mortgagor or any of Mortgagor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Mortgagor or any of Mortgagor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

8.9 SEVERABILITY. If any term of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to



which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

8.10 RELATIONSHIP OF ARTICLES. The rights, remedies and interests of Mortgagee under the Mortgage established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the Mortgage with any security interest created by the security agreement. Mortgagee may elect to exercise or enforce any of its rights, remedies or interests under either or both the Mortgage or the security agreement as Mortgagee may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the Mortgage and the security agreement.

8.11 MERGER. No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.

8.12 OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL. If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.

8.13 SEPARATE AND COMMUNITY PROPERTY. Any married person who executes this Mortgage as a Mortgagor agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon any separate property or community property of that person.

8.14 INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

8.15 CAPITALIZED TERMS. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.

8.16 SUCCESSORS IN INTEREST. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.

8.17 GOVERNING LAW. This Mortgage was accepted by Mortgagee in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and

performance, this Mortgage, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California 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 and security interests created pursuant thereto and pursuant to the other Loan Documents shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Mortgage, the Note and other Loan Documents.

8.18 CONSENT TO JURISDICTION. Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Mortgagee against Mortgagee, arising out of or relating to this Mortgage, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Mortgagor's principal place of business is located over any suit, action or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to this Mortgage, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Mortgagee to foreclose this Mortgage or any action brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.19 EXHIBITS. Exhibit A is incorporated into this Mortgage by this reference.

8.20 ADDRESSES; REQUEST FOR NOTICE. All requests, demands, notices and other communications that are required or permitted to be given to a party under this Mortgage shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission, together with a printed receipt of the successful delivery of such facsimile transmission. The addresses of the parties are set forth on page 1 of this Mortgage and the facsimile numbers for the parties are as follows:

Mortgagee: WELLS FARGO BANK, N.A.  
FAX NO.: (925) 691-5947

Mortgagor: MHC STAGECOACH, L.L.C.  
FAX NO.: (312) 279-1715

Mortgagor's principal place of business is at the address set forth on page 1 of this Mortgage. A copy of any notice to Mortgagor shall be sent as follows:

Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Attention: Benjamin Randall  
Facsimile: (312) 807-3903

Any Mortgagor whose address is set forth on page 1 of this Mortgage hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Mortgagor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.21 COUNTERPARTS. This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

8.22 WAIVER OF JURY TRIAL. MORTGAGEE (BY ITS ACCEPTANCE HEREOF) AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the day and year first above written.

WITNESS/ATTEST:

MORTGAGOR:

MHC STAGECOACH, L.L.C., a Delaware  
limited liability company

/s/ Lawrence M. Gritton  
-----  
Print Name: Lawrence M. Gritton

By: MHC-QRS STAGECOACH, INC.,  
a Delaware corporation,  
its Managing Member

/s/ Benjamin J. Randall  
-----  
Print Name: Benjamin J. Randall

By: /s/ John M. Zoeller  
-----

Name: John M. Zoeller  
Its: Vice President, Chief Financial  
Officer and Treasurer

STATE OF IL                    )  
                                  ) SS:  
COUNTY OF COOK                )

On 8/1, 2001 before me, Jennifer Usher, Notary Public, personally appeared John M. Zoeller, as Vice President, Chief Financial Officer and Treasurer of MHC-QRS STAGECOACH, INC., a Delaware corporation, the managing member of MHC STAGECOACH, L.L.C., a Delaware limited liability company, personally known to me to be the person whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Jennifer Usher  
-----  
Print Name: Jennifer Usher

My Commission Expires:

1/6/03  
[NOTARIAL SEAL]

NOTARY PUBLIC, State of IL

Serial No., if any: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF LAND

Exhibit A to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Land referred to in this Mortgage is situated in the county of Volusia, state of Florida and is described as follows:

PARCEL A:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East, also a portion of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida being more particularly described as follows:

As a point of reference begin at the Southwest corner of Section 6, Township 16 South, Range 33 East, thence along the South line of Section 6 South 89 degrees 35 minutes 25 seconds East a distance of 3300.00 feet to the Point of Beginning; thence North 00 degrees 24 minutes 35 seconds East a distance of 330.00 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 200.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 612.36 feet to a point on the Southerly right-of-way line of Clyde Morris Blvd. (a 100.00 foot right-of-way as now laid out and used); thence South 41 degrees 06 minutes 50 seconds East along the Southerly right-of-way line of said Clyde Morris Blvd. a distance of 1067.45 feet to a point on the East line of the West one-half of the Northeast one-quarter of Section 7, Township 16 South, Range 33 East; thence South 00 degrees 24 minutes 35 seconds West along the said East line of the West one-half of the Northeast one-quarter of said Section 7 a distance of 2370.82 feet; thence North 89 degrees 35 minutes 25 seconds West a distance of 1320.00 feet to a point in the West line of the West one-half of the Northeast one-quarter of Section 7; thence North 00 degrees 24 minutes 35 seconds East along the West line of the West one-half of the Northeast one-quarter of Section 7 a distance of 1650.00 feet; thence South 89 degrees 35 minutes 25 seconds East a distance of 660.00 feet; thence North 00 degrees 24 minutes 35 seconds East a distance of 990.00 feet to the Point of Beginning of this description.

PARCEL B:

A portion of the Northwest one-quarter of Section 7, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows: As a point of reference, commence at a concrete monument marking the Northwest corner of Willow Run Subdivision, Unit 2, as per map recorded September 17, 1979, in Map Book 36, Pages 16 and 17 of the Public Records of Volusia County, Florida; thence run North 00 degrees 41 minutes 47 seconds West along a Northerly extension of the Westerly line of said Willow Run Subdivision, Unit 2, a

EXHIBIT A

distance of 230.08 feet to a point in the North line of 230.00 foot Florida Power and Light Company right-of-way as described in instrument recorded October 5, 1973, in Official Records Book 1664, Pages 448-450, of the Public Records of Volusia County, Florida, said point also being in the Southerly line of Pickwick Village Mobile Home Park, an unrecorded subdivision; thence run South 89 degrees 35 minutes 24 seconds West along the North line of said Florida Power and Light Company right-of-way, being also the Southerly line of Pickwick Village, a distance of 1.13 feet to a concrete monument marking the Southwest corner of said Pickwick Village; thence North 00 degrees 24 minutes 10 seconds West, a distance of 400.00 feet to the Point of Beginning; thence North 89 degrees 45 minutes 45 seconds West, a distance of 440.02 feet to the center line of an 80.00 foot drainage ditch easement as described in instrument recorded June 28, 1966, in Official Records Book 847, Pages 429 through 444, of the Public Records of Volusia County, Florida; thence North 00 degrees 24 minutes 10 seconds West along the center line of said drainage ditch easement, a distance of 1250.34 feet; thence South 89 degrees 45 minutes 45 seconds East, a distance of 440.02 feet to a point on the Westerly line of said Pickwick Village Subdivision; thence South 00 degrees 24 minutes 10 seconds East along said Westerly line, a distance of 1250.34 feet to the Point of Beginning.

SAID PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

A portion of the Southwest one-quarter of the Southeast one-quarter of Section 6, Township 16 South, Range 33 East; also a portion of the West one-half of the Northeast one-quarter and a portion of the Northwest one-quarter, all lying in Section 7, Township 16 South, Range 33 East in Volusia County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Section 6, Township 16 South, Range 33 East and run South 89 degree 35' 25" East along the South line of the Southwest one-quarter a distance of 2635.46 feet to the Southwest corner of the Southeast one-quarter of said Section 6; thence North 01 degree 17' 05" East along the West line of the Southeast one-quarter of said Section 6 a distance of 328.72 feet to an iron pipe labeled LS 2048 and the Point of Beginning of this description; from said Point of Beginning, continue North 01 degree 17' 05" East along the West line of the Southeast one-quarter a distance of 201.23 feet to an iron pipe labeled LS 2048; thence South 89 degree 35' 25" East, 619.16 feet to an iron pipe labeled LS 2048, said point being on the Southwesterly right-of-way line of Clyde Morris Boulevard; thence South 40 degree 56' 13" East along the Southwesterly right-of-way line of said Clyde Morris Boulevard a distance of 1061.80 feet to an iron pipe labeled LS 2048, said point being on the East line of the West one-half of the Northeast one-quarter of the aforementioned Section 7, Township 16 South, Range 33 East; thence South 00 degree 34' 32" West along the East line of the West one-half of the Northeast one-quarter of said Section 7, a distance of 2362.20 feet to an iron pin labeled LB 707, said point being on the North line of the 230 foot wide Florida Power and Light Company right-of-way, as described in Official Records Book 1664, Pages 448, 449, and 450 of the Public Records of Volusia County, Florida; thence North 89 degree 13' 53" West along the North line of the 230 foot wide Florida Power and Light Company right-of-way a distance of 1321.12 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence North 00 degree 23' 35" East along the West line of the West one-half of the Northeast one-quarter a distance of 400.00 feet to an iron pipe labeled LS 2048; thence North 89 degree 13' 53" West, 440.02 feet to an iron pipe labeled LS 2048, said point being the centerline of a drainage ditch; thence North 00 degree 23' 35" East along said drainage ditch centerline a distance of 1250.34 feet to

EXHIBIT A

an iron pipe labeled LS 2048; thence South 89 degrees 13' 53" East, 440.02 feet to an iron pipe labeled LS 2048, said point being on the West line of the West one-half of the Northeast one-quarter of the aforementioned Section 7; thence South 00 degrees 23' 35" West along the West line of the West one-half of the Northeast one-quarter a distance of 12.16 feet to an iron pipe labeled LS 2048; thence South 89 degrees 27' 21" East, 661.65 feet to an iron pipe labeled LS 2048; thence North 00 degrees 25' 26" East, 984.46 feet to an iron pipe labeled LS 2048; thence North 01 degrees 14' 43" East, 328.45 feet to a nail in disk in pavement labeled LB 707; thence North 89 degrees 33' 59" West, 661.95 feet to the Point of Beginning.

EXHIBIT A



## EXHIBIT B

## CALCULATION OF DOCUMENTARY STAMP AND INTANGIBLE PERSONAL PROPERTY TAX

Exhibit B to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

This Mortgage is part of an out-of-state loan transaction which only partially secures the loan. This Mortgage encumbers the property described on Exhibit A, and separate mortgages are being executed and delivered by Mortgagor encumbering certain other property located in Florida and in other states (such other property being further described on Exhibit C and being referred to as the "Other Property"). The Florida collateral is located in Brevard, Volusia and Manatee Counties, and three (3) separate mortgages (the Florida Mortgages") encumbering three (3) properties are being executed and delivered by Mortgagor for simultaneous recording in the various Florida counties described above. The total indebtedness secured by this Mortgage equals \$50,000,000.00, as evidenced by one (1) promissory note in the aggregate original principal amount of \$50,000,000.00 (the "Note"). The Note was made, executed and delivered outside the State of Florida. The value of the Florida property encumbered by the Florida Mortgages equals \$27,200,000.00. The aggregate value of all other property securing the loan and located outside the State of Florida equals \$50,400,000.00. Thus, the total aggregate value of all property securing the loan equals \$77,600,000.00. The property encumbered by the Florida Mortgages and located in Florida represents thirty-five (35%) percent [ $\$27,200,000.00 / \$77,600,000.00$ ] of the total value of all property securing the loan. In accordance with Florida Statutes, Section 201.08, and Florida Administrative Code, Rule 12B-4.053(32)(b), documentary stamp tax is computed based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all mortgaged property (which, in this case, equals \$17,500,000.00). Accordingly, documentary stamp tax in the amount of \$61,250.00 is due upon the recording of the Florida Mortgages in the Florida counties listed above. Pursuant to Chapter 199, Florida Statutes, non-recurring intangible personal property tax is computed and payable based upon that portion of the indebtedness which bears the same relation as the value of the mortgaged property located in Florida bears to the total value of all mortgaged property, which, in this case, equals [ $\$50,000,000.00 \times (\$27,200,000.00 / \$77,600,000.00)$ ]. Thus, non-recurring intangible personal property tax in the amount of \$35,000.00 is due and payable upon recording of the Florida Mortgages in the Florida counties listed above.

EXHIBIT B

EXHIBIT C

DESCRIPTION OF OTHER PROPERTY

Exhibit C to MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Mortgage") between MHC STAGECOACH, L.L.C., a Delaware limited liability company, as "Mortgagor," and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Mortgagee."

Description of Land. The Other Property referred to in this Mortgage is described as follows:

CABANA PROPERTY

The Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada.

EXCEPTING THEREFROM the described premises:

The North Forty feet (40.00') and the East Forty feet (40.00') of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada; together with the certain spandrel area in the Northeast Quarter corner thereof, also being the Southwest corner of the intersection of East Twain Avenue and Cabana Drive, bounded as follows: on the North by the South line of the North Forty feet (40.00'); on the East by the West line of the East Forty feet (40.00'), and on the Southwest by the arc of a curve concave Southwesterly, having a radius of Twenty five feet (25.00') that is tangent to the South line of said North Forty feet (40.00') is tangent to the South line of said North Forty feet (40.00') and tangent to the West line of said Forty feet (40.00').

ALSO BEING described as that portion of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section 16, Township 21 South, Range 62 East, M.D.B. & M., Clark County, Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Northeast Quarter (NE 1/4) of the Southwest Quarter of said Section 16; thence South 01 degree 55' 58" East a distance of 40.01 feet to a point on the Southerly right of way line of Twain Avenue (80.00 feet wide) said point being the TRUE POINT OF BEGINNING; thence North 89 degrees 09' 31" East, along said Southerly right of way of Twain Avenue a distance of 1259.02 feet to a point of tangent curve concave to the Southwest having a radius of 25.00 feet; thence Southeasterly along the arc of said curve through a central angle of 89 degrees 28' 02" an arc length of 39.04 feet to a point on the Westerly right of way line of Cabana Drive (80.00 feet wide); thence South 01 degree 22' 27" East along said Westerly right of way line of Cabana Drive a distance of 1238.26 feet; thence South 88 degrees 17' 57" West a distance of 1271.25 feet; thence North 01 degree 55' 58" West a distance of 1282.27 feet to the TRUE POINT OF BEGINNING.

EXHIBIT C

WOODLAND HILLS PROPERTY

Northwest 1/4 of the Southeast 1/4 and the North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West of the 6th P.M., County of Adams, State of Colorado,

EXCEPT portions dedicated for County roads;

AND EXCEPT that part described as follows:

Beginning at the center of Section 21, Township 2 South, Range 68 West of the 6th P.M., thence South 89 degrees 53 minutes East along the North line of the Southeast 1/4, Section 21, a distance of 40.00 feet; thence South parallel to the West line of the Southeast 1/4 of said Section, 30.00 feet to the True Point of Beginning; thence South 89 degrees 53 minutes East parallel to the North line of the Southeast 1/4 a distance of 180.00 feet; thence South parallel to the West line of the Southeast 1/4, 150.00 feet; thence North 89 degrees 53 minutes West parallel to the North line of the Southeast 1/4, 180.00 feet; thence North parallel to the West line of the Southeast 1/4, 150.00 feet to the True Point of Beginning, being in the City of Thornton, County of Adams, State of Colorado;

AND EXCEPT that part described as follows:

A part of the Southeast 1/4 of Section 21, Township 2 South, Range 68 West, of the 6th P.M., County of Adams, State of Colorado, described as follows:  
Beginning at a point 220.00 feet East and 180.00 feet South of the Northwest corner of said Southeast 1/4; thence Southerly and parallel to the West line of said Southeast 1/4 a distance of 393.93 feet; thence on an angle to the right of 90 degrees a distance of 180.00 feet to a point 40 feet East of the West line of said Southeast 1/4; thence on an angle to the right of 90 degrees and parallel to said West line a distance of 394.76 feet to a point 180.00 feet South of the North line of said Southeast 1/4; thence on an angle to the right 90 degrees 16 minutes 40 seconds and parallel to said North line a distance of 180.00 feet to the Point of Beginning, County of Adams, State of Colorado.

EXHIBIT C

WINDMILL PROPERTY

PARCEL A:

Begin at the Northwest corner of the Southeast 1/4 of the Northeast 1/4 of Section 16, Township 35 South, Range 18 East, Manatee County, Florida; thence South 00 (degrees) 14' 17" East, 1327.25 feet to the Southwest corner of the Southeast 1/4 of the Northeast 1/4 of the aforementioned Section 16; thence North 89 (degrees) 58' 09" East, 1322.53 feet to the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of Section 16; thence South 00 (degrees) 24' 10" East, 137.28 feet; thence North 89 (degrees) 40' 44" East, 1269.21 feet; thence North 00 (degrees) 15' 02" West, 137.28 feet; thence North 89 (degrees) 40' 56" East, 42.00 feet along the South line of the Southwest 1/4 of the Northwest 1/4 of Section 15, Township 35 South, Range 18 East, Manatee County, Florida to a point, said point being the Southwest corner of the Easterly 8.00 feet of the Southwest 1/4 of the Northwest 1/4 of Section 15; thence North 00 (degrees) 15' 02" West along the West line of said Easterly 8.00 feet, 529.06 feet; thence North 89 (degrees) 54' 48" West, 352.77 feet; thence North 83 (degrees) 03' 14" West, 41.33 feet; North 89 (degrees) 58' 10" West, 384.29 feet; thence North 64 (degrees) 05' 35" West, 45.06 feet; thence North 89 (degrees) 49' 37" West, 69.63 feet; thence North 00 (degrees) 27' 02" West, 39.77 feet; thence South 89 (degrees) 57' 27" West, 229.20 feet; thence South 00 (degrees) 34' 37" West, 52.86 feet; thence South 89 (degrees) 50' 04" West, 69.88 feet; thence North 68 (degrees) 46' 00" West, 42.84 feet; thence North 89 (degrees) 02' 58" West, 70.09 feet; thence North 00 (degrees) 46' 23" West, 36.15 feet; thence South 89 (degrees) 58' 50" West, 204.28 feet; thence South 01 (degrees) 06' 03" West, 34.82 feet; thence North 89 (degrees) 55' 45" West, 69.61 feet; thence North 61 (degrees) 14' 43" West, 46.29 feet; thence North 89 (degrees) 47' 56" West, 49.68 feet; thence North 01 (degrees) 06' 00" West, 14.20 feet; thence South 89 (degrees) 37' 41" West, 244.94 feet; thence North 14 (degrees) 02' 42" West, 20.66 feet; thence North 00 (degrees) 04' 49" East, 50.12 feet; thence North 07 (degrees) 13' 20" West, 40.26 feet; thence North 00 (degrees) 29' 42" West, 229.78 feet; thence North 89 (degrees) 19' 18" East, 21.87 feet; thence North 00 (degrees) 01' 05" East, 69.28 feet; thence North 16 (degrees) 42' 43" West, 41.53 feet; thence North 00 (degrees) 18' 37" East, 70.77 feet; thence North 90 (degrees) 00' 00" West, 443.35 feet; thence North 02 (degrees) 07' 48" West, 80.67 feet; thence North 25 (degrees) 58' 34" East, 33.85 feet; thence North 00 (degrees) 07' 24" East, 93.96 feet; thence South 89 (degrees) 59' 49" West, 295.60 feet to the Point of Beginning.

PARCEL B:

Perpetual non-exclusive rights-of-way and easements as contained in Agreements recorded January 13, 1939, in Deed Book 159, page 331, and rerecorded February 16, 1939, in Deed Book 160, page 23; recorded October 30, 1939, in Deed Book 164, page 340; and recorded May 31, 1974, in Official Records Book 673, page 646, all of the Public Records of Manatee County, Florida.

EXHIBIT C

INDIAN OAKS PROPERTY

PARCEL A:

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 21, and run North 89 (degrees) 50' 50" East, along the North line of said Section 21, a distance of 330.04 feet to the Point of Beginning; thence continue North 89 (degrees) 50' 50" East, along said North line, a distance of 816.83 feet; thence South 05 (degrees) 47' 10" West, a distance of 2488.78 feet; thence North 89 (degrees) 53' 00" West, a distance of 419.86 feet; thence South 01 (degrees) 04' 00" East, a distance of 150.00 feet, to a point on the North Right of Way line of Barnes Boulevard (a 100 foot Right of Way); thence North 89 (degrees) 53' 00" West, along said North Right of Way line, a distance of 100.02 feet; thence North 01 (degrees) 04' 00" West, parallel to the West line of said Northwest 1/4, a distance of 2623.29 feet, to the Point of Beginning.

PARCEL B:

A perpetual non-exclusive easement for the benefit of Parcel A for surface water runoff from "Pod #2" through a weir on said land eastward to an existing drainage ditch as set forth in Grant of Easement from George M. Green, Jr. and Sandie J. Green in favor of The Indian Oaks Corporation, dated July 27, 1987, recorded August 4, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2826, page 2681; and modified by Stipulated Settlement in Civil Action No. 87-9785-CA-C, The Indian Oaks Corporation, a Florida corporation, Plaintiffs, vs. George M. Green, Jr. and Sandie J. Green, his wife, Defendants, dated July 27, 1987, recorded August 20, 1987, in the Public Records of Brevard County, Florida, at Official Records Book 2831, page 2211, more particularly described as follows:

Beginning at the approximate Southwest corner of land to the East as described in Deed recorded in Official Records Book 2471, page 2094, Public Records of Brevard County, Florida, said point being on the public drainage ditch on the north side of Barnes Boulevard; thence north along an existing approximately twenty (20) foot wide drainage ditch on the westerly boundary of the land described in said Deed for an approximate distance of 844.00 feet to an outlet pipe which extends easterly into said drainage ditch from a Type "C" inlet weir located on "Pod #2" of Parcel A.

EXHIBIT C

APOLLO VILLAGE PROPERTY

That portion of the Southwest quarter of Section 21, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 21;

THENCE North 00 (DEGREE) 34' 15" East (assumed bearing) along the West line of said Section 21, a distance of 786.55 feet;

THENCE South 89 (DEGREE) 25' 45" East 65.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89 (DEGREE) 25' 45" East 126.95 feet;

THENCE North 87 (DEGREE) 23' 37" East 116.40 feet;

THENCE South 00 (DEGREE) 30' 51" West 124.13 feet to the Northeast corner of the property described in Docket 10568, page 613, records of Maricopa County, Arizona;

THENCE South 00 (DEGREE) 34' 44" West along the East line of said property 156.09 feet to a point on a line 500.00 feet North and parallel to the South line of said Section 21;

THENCE North 88 (DEGREE) 16' 15" East along said line 530.61 feet to the Northeast corner of the property described in Docket 6785, page 268, records of Maricopa County, Arizona;

THENCE South 00 (DEGREE) 27' 31" West 435.31 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;

THENCE North 88 (DEGREE) 16' 15" East along said line 51.93 feet;

THENCE North 00 (DEGREE) 20' 35" East 127.50 feet;

THENCE North 02 (DEGREE) 21' 45" West 308.14 feet;

THENCE North 88 (DEGREE) 15' 20" East 445.27 feet;

THENCE North 21 (DEGREE) 52' 10" East 195.00 feet;

THENCE South 89 (DEGREE) 39' 20" East 285.57 feet to a point on the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE North 00 (DEGREE) 20' 40" East along said West line 807.45 feet to a point on the Southerly line of the property described in Docket 15563, page 420, records of Maricopa County, Arizona;

THENCE South 86 (DEGREE) 58' 05" West along said South line and the South line of the property described in Docket 15133, page 167, records of Maricopa County, Arizona, 1,366.81 feet to a point 309.53 feet East of the West line of said Section 21;

THENCE South 00 (DEGREE) 37' 00" West 616.40 feet (620.95 feet, record) to the North line of the property described in Docket 6099, page 277, records of Maricopa County, Arizona;

THENCE North 89 (DEGREE) 25' 45" West along said North line 243.43 feet to a point on a line 65.00 feet East of and parallel to the West line of said Section 21;

THENCE South 00 (DEGREE) 34' 15" West along said line 55.48 feet to the POINT OF BEGINNING;

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88 (DEGREE) 16' 15" East (an assumed bearing) along the South line of said Section 21, a distance of 840.11 feet;

THENCE North 00 (DEGREE) 27' 31" East 65.05 feet to the POINT OF BEGINNING;

THENCE continuing North 00 (DEGREE) 27' 31" East along the East line of the property described in Docket 6785, page 259, records of Maricopa County, Arizona, 435.31 feet;

THENCE North 87 (DEGREE) 25' 34" East 36.52 feet;

THENCE South 02 (DEGREE) 21' 45" East 308.14 feet;

THENCE South 00 (DEGREE) 20' 35" West 127.50 feet to a point on a line 65.00 feet North of and parallel to the South line of said Section 21;

THENCE South 88 (DEGREE) 16' 15" West along said line 51.93 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88 (DEGREE) 08' 29" East (North 88 (DEGREE) 16' 15" East, record) along the South line of said Section 21, a distance of 1,684.02 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE North 00 (DEGREE) 06' 45" East 669.32 feet (North 00 (DEGREE) 20' 40" East 669.45, record) along said West line to the POINT OF BEGINNING;

THENCE North 89 (DEGREE) 47' 06" West (North 89 (DEGREE) 39' 20" West, record) 115.00 feet;

THENCE North 16 (DEGREE) 08' 00" East 325.00 feet;

THENCE North 52 (DEGREE) 29' 10" East 31.95 feet to the West line of the East 60 acres of the Southwest quarter of said Section 21;

THENCE South 00 (DEGREE) 06' 45" West (South 00 (DEGREE) 20' 40" West, record) along said West line 332.09 feet to the POINT OF BEGINNING; and

EXCEPT COMMENCING at the Southwest corner of said Section 21;

THENCE North 88 (DEGREE) 16' 15" East along the South line of said Section 21, a distance of 892.17 feet;

THENCE North 00 (DEGREE) 20' 35" East 65.04 feet to a point on a line parallel to and 65.00 feet North of the South line of said Section 21;

THENCE continuing North 00 (DEGREE) 20' 35" East 127.50 feet;

THENCE North 02 (DEGREE) 21' 45" West 308.14 feet;

THENCE North 88 (DEGREE) 15' 20" East 445.27 feet;

THENCE North 21 (DEGREE) 52' 10" East 195.00 feet;

THENCE South 89 (DEGREE) 39' 20" East 21.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89 (DEGREE) 39' 20" East 55.00 feet;

THENCE North 00 (DEGREE) 20' 40" East 40.00 feet;

THENCE North 89 (DEGREE) 39' 20" West 55.00 feet;

THENCE South 00 (DEGREE) 20' 40" West 40.00 feet to the POINT OF BEGINNING.

EXHIBIT C

CASA DEL SOL III PROPERTY

PARCEL NO. 1:

That part of Lot 3, A Subdivision of the East half of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, according to Book 11 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 24;

THENCE West along the South line of said Section 24, a distance of 1,320.54 feet;

THENCE North 01 (DEGREE) 38' 30" East 55.02 feet to a point on a line that is 55.00 feet North of and parallel to said South line said line being the North line of Peoria Avenue and the TRUE POINT OF BEGINNING;

THENCE West along said North line 627.98 feet;

THENCE North 45 (DEGREE) 44' 20" East 28.64 feet;

THENCE North 01 (DEGREE) 28' 40" East 307.70 feet;

THENCE North 45 (DEGREE) 00' 00" East 149.61 feet;

THENCE North 32 (DEGREE) 31' 59" West 76.22 feet;

THENCE North 01 (DEGREE) 38' 30" East 420.00 feet;

THENCE North 89 (DEGREE) 57' 50" East 11.71 feet;

THENCE North 01 (DEGREE) 38' 30" East 133.00 feet to a point on a non-tangent curve concave to the East the center of which bears North 80 (DEGREE) 00' 01" East having a radius of 1,430.40 feet and an interior angle of 23 (DEGREE) 03' 59";

THENCE Northeasterly along said curve 575.86 feet;

THENCE North 01 (DEGREE) 38' 30" East 84.00 feet;

THENCE North 89 (DEGREE) 57' 50" East 738.38 feet;

THENCE South 01 (DEGREE) 38' 30" West 1,407.21 feet;

THENCE West 200.00 feet;

THENCE South 01 (DEGREE) 38' 30" West 300.11 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

A perpetual easement for the installation and maintenance of private utility lines and drainage, as created in instrument recorded in Docket 12335, page 1213, records of Maricopa County, Arizona, being 12.00 feet in width, being 6.00 feet on each side of the centerlines described as follows:

BEGINNING at the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE West 1,326.54 feet along the South line of said Section 24;

THENCE North 01 (DEGREE) 38' 30" East 55.00 feet to the TRUE POINT OF BEGINNING;

THENCE North 01 (DEGREE) 38' 30" East 306.11 feet;

THENCE East 206.00 feet to the point of termination; and

EXHIBIT C



BEGINNING at a point which bears North 01(DEGREE)38' 30" East 1,757.00 feet and South 89 (DEGREE) 57' 50" West 1,120.55 feet from the Southeast corner of said Section 24;

THENCE South 89 (DEGREE) 57' 50" West 1,498.24 feet to a point on the East line of the West 40.00 feet of the Southeast quarter of said Section 24 and the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 3:

A perpetual easement for irrigation purposes and for the use, construction and maintenance of an irrigation lateral, as created in instrument recorded in Docket 12335, page 1215, records of Maricopa County, Arizona, being 5.00 feet in width, being 2.50 feet on each side of the centerline described as follows:

BEGINNING at a point which bears North 01 (DEGREE) 38' 30" East 1,760.50 feet and South 89 (DEGREE) 57' 50" West 55.00 feet from the Southeast corner of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; THENCE South 89 (DEGREE) 57' 50" West 1,833.37 feet to the point of termination;

EXCEPT any portion lying within Parcel No. 1.

PARCEL NO. 4:

A portion of the Southeast quarter of Section 24, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

A strip of land 6.00 feet in width located West of and parallel to the Easterly boundary line of that certain Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona, described as follows:

COMMENCING at the South quarter corner of Section 24;

THENCE North 01 (DEGREE) 28' 40" East along the West line of the Southeast quarter of said Section 24, 1,760.87 feet to a point on the South line of Lot 2 as shown in Book 11 of Maps, page 30, records of Maricopa County, Arizona;

THENCE North 89 (DEGREE) 55' 44" East along said South line 794.70 feet to a point 6.00 feet West of and parallel to said Easterly boundary line of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the POINT OF BEGINNING;

THENCE continuing North 89 (DEGREE) 55' 44" East, along said South line, 6.00 feet to the Northeast corner of said Special Warranty Deed recorded in Document No. 99-439307, records of Maricopa County, Arizona and the Northwest corner of Quit Claim Deed Recorded in Document No. 95-388831, records of Maricopa County, Arizona;

THENCE South 01 (DEGREE) 38' 36" West, along the Easterly boundary line of said Special Warranty Deed and the Westerly boundary line of said Quit Claim Deed, 84.00 feet to the beginning of a non-tangent curve concave Easterly and having a radial bearing of North 76 (degree) 55' 57" West;

THENCE Southerly along said curve and along said Easterly and Westerly boundary lines and through a central angle of 19 (DEGREE) 06' 47" an arc length of 477.16 feet;

EXHIBIT C

THENCE South 89 (DEGREE) 55' 44" West to a point 6.00 feet West of and parallel to said Easterly and Westerly boundary lines to the beginning of a curve concave Easterly and having a radius of 1,436.40 feet;

THENCE Northerly along said curve 6.00 feet West of and parallel to said Easterly and Westerly boundary lines through a central angle of 19 (DEGREE) 03' 50" an arc length of 477.93 feet;

THENCE North 01 (DEGREE) 38' 36" East 6.00 feet West of and parallel to said Easterly and Westerly boundary lines 83.22 feet to the POINT OF BEGINNING.

EXHIBIT C

MANUFACTURED HOME COMMUNITIES, INC.  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
 (Dollar amounts in thousands)

	For the Years Ended December 31,				
	2001	2000	1999	1998	1997
Income before allocation to Minority Interests and extraordinary loss on early extinguishment of debt	\$ 51,544	\$ 52,701	\$ 36,835	\$ 35,663	\$ 33,469
Fixed Charges	62,557	64,532	56,619	49,693	21,753
Earnings	\$114,101	\$117,233	\$ 93,454	\$ 85,356	\$ 55,222
Interest incurred	\$ 50,197	\$ 52,317	\$ 53,134	\$ 49,160	\$ 20,708
Amortization of deferred financing costs	1,108	963	641	533	1,045
Perpetual Preferred OP Unit Distributions	11,252	11,252	2,844	--	--
Fixed Charges	\$ 62,557	\$ 64,532	\$ 56,619	\$ 49,693	\$ 21,753
Earnings/Fixed Charges	1.82	1.82	1.65	1.72	2.54

MANUFACTURED HOME COMMUNITIES, INC.  
SUBSIDIARIES OF THE REGISTRANT

	State of Incorporation or Organization -----
MHC Operating Limited Partnership	Illinois
MHC Financing Limited Partnership	Illinois
MHC Financing Limited Partnership Two	Delaware
Blue Ribbon Communities Limited Partnership	Delaware
MHC Lending Limited Partnership	Illinois
MHC-DeAnza Financing Limited Partnership	Illinois
MHC-Bay Indies Financing Limited Partnership	Illinois
MHC Stagecoach, L.L.C.	Delaware

MANUFACTURED HOME COMMUNITIES, INC.  
CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements (Form S-8 No. 333-68473, No. 333-28469, No. 333-25295, and No. 33-76486, and Form S-3 No. 333-66550, No. 333-90813, No. 333-65515, No. 333-25297, No. 333-1710, No. 33-82902 and No. 33-97288) of Manufactured Home Communities, Inc., and in the related Prospectuses, of our report dated January 29, 2002, except for Note 10 as to which the date is February 8, 2002 and Note 18 as to which the date is February 22, 2002, with respect to the consolidated financial statements and schedules of Manufactured Home Communities, Inc., and to the reference to our firm under the caption "Selected Financial and Operating Information" included in this Annual Report (Form 10-K) for the year ended December 31, 2001.

ERNST & YOUNG LLP

Chicago, Illinois  
March 22, 2002

POWER OF ATTORNEY

EXHIBIT 24.1

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

KNOW ALL MEN BY THESE PRESENTS that John F. Podjasek, Jr., having an address at Barrington, Illinois, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, John F. Podjasek, Jr., has hereunto, set his hand this 27th day of March, 2002.

/s/ John F. Podjasek, Jr.  
-----  
John F. Podjasek, Jr.

I, Jennifer L. Usher, a Notary Public in and for said County in the State aforesaid, do hereby certify that John F. Podjasek, Jr., personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of March, 2002.

/s/ Jennifer L. Usher  
-----  
(Notary Public)

My Commission Expires:

January 6, 2003

POWER OF ATTORNEY

EXHIBIT 24.2

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF ALAMEDA )

KNOW ALL MEN BY THESE PRESENTS that Michael A. Torres, having an address at 1250 Bay St., Alameda, California, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, Michael A. Torres, has hereunto, set his hand this 19th day of March, 2002.

/s/ Michael A. Torres  
-----  
Michael A. Torres

I, Nancy K. Hagel, a Notary Public in and for said County in the State aforesaid, do hereby certify that Michael A. Torres, personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of March, 2002.

/s/ Nancy K. Hagel  
-----  
(Notary Public)

My Commission Expires:

March 14, 2005

POWER OF ATTORNEY

EXHIBIT 24.3

STATE OF NEW YORK )
) SS
COUNTY OF NEW YORK )

KNOW ALL MEN BY THESE PRESENTS that Thomas E. Dobrowski, having an address at 767 5th Ave., New York, New York, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, Thomas E. Dobrowski, has hereunto, set his hand this 15th day of March, 2002.

/s/ Thomas E. Dobrowski
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Thomas E. Dobrowski

I, Cynthia L. Morra, a Notary Public in and for said County in the State aforesaid, do hereby certify that Thomas E. Dobrowski, personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of March, 2002.

/s/ Cynthia L. Morra
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(Notary Public)

My Commission Expires:

March 30, 2003



POWER OF ATTORNEY

Exhibit 24.4

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KITSAP )

KNOW ALL MEN BY THESE PRESENTS that Gary L. Waterman, having an address at Bainbridge, Washington, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, Gary L. Waterman, has hereunto, set his hand this 27th day of March, 2002.

/s/ Gary L. Waterman  
-----  
Gary L. Waterman

I, Judy S. Cooley, a Notary Public in and for said County in the State aforesaid, do hereby certify that Gary L. Waterman, personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of March, 2002.

/s/ Judy S. Cooley  
-----  
(Notary Public)

My Commission Expires:

August 29, 2002

POWER OF ATTORNEY

Exhibit 24.5

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF WASHTENAW )

KNOW ALL MEN BY THESE PRESENTS that Donald S. Chisholm, having an address at Ann Arbor, Michigan, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, Donald S. Chisholm, has hereunto, set his hand this 19th day of March, 2002.

/s/ Donald S. Chisholm  
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Donald S. Chisholm

I, Nancy C. Gross, a Notary Public in and for said County in the State aforesaid, do hereby certify that Donald S. Chisholm, personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of March, 2002.

/s/ Nancy C. Gross  
-----  
(Notary Public)

My Commission Expires:

July 16, 2002

POWER OF ATTORNEY

Exhibit 24.6

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

KNOW ALL MEN BY THESE PRESENTS that Louis H. Masotti, having an address at 915 Sunset Dr., Healdsburg, California, has made, constituted and appointed and BY THESE PRESENTS, does make, constitute and appoint John M. Zoeller and Howard Walker, or either of them, having an address at Two North Riverside Plaza, Chicago, Illinois 60606, his true and lawful Attorney-in-Fact for him and in his name, place and stead to sign and execute in any and all capacities this Annual Report on Form 10-K and any or all amendments to this Annual Report on Form 10-K, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, giving and granting unto each of such, Attorney-in-Fact, full power and authority to do and perform each and every act and thing, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes as he might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that each of such Attorney-in-Fact or his substitutes shall lawfully do or cause to be done by virtue hereof.

This power of Attorney shall remain in full force and effect until terminated by the undersigned through the instrumentality of a signed writing.

IN WITNESS WHEREOF, Louis H. Masotti, has hereunto, set his hand this 15th day of March, 2002.

/s/ Louis H. Masotti  
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Louis H. Masotti

I, Ann Randel Masotti, a Notary Public in and for said County in the State aforesaid, do hereby certify that Louis H. Masotti, personally know to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of March, 2002.

/s/ Ann Randel Mateas  
-----  
(Notary Public)

My Commission Expires:

April 25, 2002