



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
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TRANSACTIONAL TUESDAYS #6

Commitment, Closing Documents & Post Closing Issues

FACULTY

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PROGRAM COORDINATORS

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April 23, 2019
Suffolk County Bar Association, New York

IRWIN S. IZEN, Esq., is a 1981 Graduate of the State University of New York @ Stony Brook and received his Juris Doctor from The George Washington University in 1985. Admitted to practice in 1986, Mr. Izen has been a longtime member of the Suffolk County Bar Association and was a partner at Davies, Elston & Izen, located in Hauppauge, New York until 1992 when he launched a solo practice specializing in real estate and transactional law. He is also admitted to the United States District Court, Eastern District and in the past has sat on the Chicago Title Insurance Company Advisory Board and has served as a Small Claims Arbitrator and Pro Bono Foreclosure project volunteer.

He currently maintains his office at 357 Veterans Memorial Highway, Commack, New York where he concentrates on real estate and commercial transactions on behalf of individual, small business owners and institutional clients.

Mr. Izen has served as the co-chairman of the Suffolk County Bar Association Real Property Committee twice, from 2001-2003 and from 2009-2011 and currently co-chairs the Transactional Law Committee. He has conducted CLE lectures on behalf of the Suffolk County Bar Association addressing topics such as:

- Article 14 Real Property Disclosure Law
- RPAPL section 1921 mortgage discharge affidavit
- Sustaining Real Estate Ownership in Today's Economy
- Piercing the Corporate Veil

A longtime resident of the Commack area, Irwin is actively involved in youth sports having served on the Boards of the Commack South Little League and Commack Soccer League in addition to being an IAABO Basketball official.

SESSION VI- APRIL 23, 2019I. COMMITMENT, CLOSING AND POST CLOSING ISSUES

ETHICS:

Fact: Regarding the building purchase, your client's mortgage representative approves you as attorney for the loan closing. You are P's attorney in the real estate purchase. Can you represent both?

NYS Ethics opinion 952 indicates No at first but leaves open the opportunity to make the conflict one that can be consent able so long as the terms of the mortgage loan are set, the representation is limited (but for this client), as opposed to a recurring source of business.

Analysis: Under 1.7 (a) of the NY Rules of Professional Conduct Representing differing interests? Prohibition where significant risk of judgment affected by financial, business or personal gain.

Yet 1.7(b) allows the representation. provided conditions are met in 1.7(b), with the reasonable expectation of providing competent representation or do the interests of the mortgagee and borrower overlap sufficiently to allow for dual representation. There is a potential conflict if any "negotiations" are to be conducted by you as attorney for the lender as to advancing the cause of the lender to the detriment of the borrower (your client). It is the advancement of the lender's cause at the expense of the client which runs afoul of the consent waiver. [Violation under 1.7(a)(1) & (2)]

Can the concurrent representation be waived? under the waiver the reasonable belief standard? Most arguments are against concurrent representation when the attorney's stream of business is derived from the mortgagee but in an isolated instance where commitment has been issued the closing has been reduced to a checklist with an "administrative" component attached, a properly drafted waiver /consent can be effective in establishing informed consent.

Conflict exists? Yes

Consent able? Yes

Fact: At the time of closing on the building an escrow was established for compliance with an open sign permit. In closing out the open sign permit, the seller needed to lower the placement of the sign on the building and undertook to so lower and reinstall the sign. The escrow agreement called for \$ 5,000.00 to be held pending closing out the open sign permit. After closing P's attorney indicates to you as escrowee to not release the escrow as the relocation of the sign has caused it to not be as visible from the road as was its prior location on the building. The escrow agreement gave S the right to alter the existing sign as needed in order to comply with the Town Building code. Can you as attorney for S release the sign escrow given the objection of P's attorney?

RULE 1.15(c)(4) requires the prompt payment or delivery to the client of funds in the attorney's possession that the client is entitled to receive. Hence if the terms of the escrow agreement are drafted accordingly, and the client who goes to the building department and closes out the permit who subsequently demands payment from you of his escrow money, you may be obligated to pay the escrow sum to him.

The authority and terms of the escrow agreement will determine potential liability for a breach of the esrowee's fiduciary duty, but the disbursement made in good faith pursuant

to the clear terms of the escrow agreement may be sufficient to shield the attorney from the claim of a bad faith escrow release.

Fact: The BULK sales clearance has not yet been obtained as of closing so an escrow is agreed upon with the terms of the escrow being a BULK SALES release. The agreement is drafted as such that if Seller does not provide BULK Sales release within 60 days of closing that the money will be released to P for the payment of any taxes and penalties necessary in order to receive BULK sales clearance. After months, S has failed to secure BULK clearance and P has demanded Escrow money to satisfy S's outstanding obligation.

RULE 1.15 again is relevant but here there may be an interpretation of the escrow agreement as to requiring payment.

I. The COMMITMENT (First off, are we negotiating an Assignment?)

a. TERMS of COMMITMENT

i) Review terms:

Borrower, real estate holding company for mortgage

Collateral assignment of leases

Lease between borrower, R/E holding company and

Tenant (PUB) for no less than term of loan

Collateral assignment of tenant leases residential

Estoppel certificates

Borrower and PUB to grant additional security interest in

fixtures, furnishings, accounts receivables, etc.,

Prepayment penalty if any

Appraisal

Environmental Assessment phase I minimal

Title

Survey

Insurance

Financial covenants of borrower annual reporting

Maintain banking relationship with Lender

Occupancy of the Mortgaged Property (what % of leased space) and at what minimum rental

Cross collateral if two entities

Guarantee by corporate entity of loan (depends on where money is showing as originating)

Undertakings (open CO)?

Environmental indemnity and usage limitations

Licenses or other certificates lender is requiring, i.e. Liquor

Due on sale or transfer clause,

Certificate of Good Standing

Opinion Letter

Resolutions and or consents of Members/voting

Assignment of L&R with Estoppels

ANY OTHER DOCUMENT required by Lender

II. CLOSING DOCUMENTS

a. CONVENTIONAL

As per the Commitment / Checklist. Note the Commitment will most likely be addressed to Real Estate portion and PUB or business portion so the cross reference in the commitment may refer to the operating business (PUB) and Real estate holding company in terminology

Mortgage Closing Documents:

b. PMM and SELLER FINANCING

Note/ PMM Affidavits

Promissory NOTES - PUB sale

Collateral Assignment of Lease

III. POST CLOSING ISSUES

a. ESCROW or other Open lender undertakings (close out open permits, licenses, biennial registration, water bill)

Holdbacks for repairs, or other conditions

BULK SALES liability on Transferee

b. Creditors popping up, creditor fund

Debtor / creditor law and fraudulent conveyance issues

Unrecorded liens or claims-mechanics liens, unpaid taxes, look to origin of liability for indemnification coverage.

c. Default on collateral

Foreclosure on PMM, mixed use property subject to RPAPL residential foreclosure rules & regulations?

Strict foreclosure on collateral under UCC 9-620

Seizure of collateral

Possession of collateral

d. Injunctive relief on Customer list, non-solicitation and other restrictive sales provisions TRO

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Citibank

Individual Client and or
Client's existing Business, if already established, entity
guarantee

Ladies and Gentlemen:

We are pleased to inform you that CITIBANK, N.A. ("Lender") has approved your request for a \$680,000 first priority real estate secured loan (the "Loan"), subject to the following terms and conditions:

1. Borrower.

real estate holding company to be formed /existing ?
The Loan shall be extended to [REDACTED] ("Borrower").

2. Loan Amount.

The Loan amount shall be equal to the lesser of (a) \$680,000, or (b) eighty percent (80%) of Lender's approved appraised value of the Mortgaged Property, as defined hereinafter.

3. Maturity Date.

The Loan shall mature ten (10) years following the Closing Date, as defined hereinafter.

4. Repayment Terms:

Principal and accrued interest shall be due and payable in equal monthly payments over a fully amortizing ten (10) year term.

5. Interest Rate.

Interest on the Loan shall accrue at a fixed rate equal to 250 basis points in excess of Lender's ten (10) year Cost of Funds in effect three (3) business days prior to Closing Date, which Costs of Funds rate is based on the applicable term ISDA Swap Rate. Indicative pricing is available upon request.

6. Guarantors.

The Loan shall be jointly and severally, unconditionally and irrevocably guaranteed by [REDACTED] (the "Individual Guarantors") and by [REDACTED] Entity; [REDACTED] (the "Guarantors"); the Individual Guarantors and [REDACTED] Guarantors shall be collectively referred to herein as, the "Guarantors").

7. Commitment Fee. Waived.

8. Escrow. Intentionally Omitted.

9. Collateral.

A) A first Mortgage and Security Agreement encumbering that certain real property, personal property, and fixtures located at [REDACTED] (the "Mortgaged Property").

Entity

B) A collateral assignment of the lease agreement(s) between Borrower and the [REDACTED] for a term of not less than ten (10) years and which provides for an aggregate rental not less than [REDACTED] of the aggregate of the mortgage payment of the Loan, real estate taxes, insurance and all carrying charges.

C) A collateral assignment of all additional leases affecting the Mortgaged Property, which lease agreements shall contain a satisfactory subordination clause specifying they are subject and subordinate in all respects to the lien of the Lender.

At least twenty (20) days prior to the Closing Date, Lender shall be provided with copies of all such additional leases, which leases shall be subject to Lender's approval, as well as an Estoppel Certificate and Subordination Agreement, if applicable, for each such lease, all in form and content satisfactory to Lender.

D) As additional security for the Loan, Borrower and ~~Entity~~ Guarantors will grant to Lender first priority security interests in, among other things and by way of example and not by way of limitation, all of their equipment, inventory, furniture, furnishings, fixtures, trade fixtures and receivables and such other personal property of Borrower and ~~Entity~~ Guarantors as Lender shall require.

(The foregoing real and personal property which are to secure the Loan are sometimes collectively referred to as the "Collateral").

10. Prepayment.

The Loan may be prepaid, in whole or in part, at any time, in a minimum amount of the lesser of (a) \$100,000 or (b) ten (10%) percent of the unpaid principal balance of the Loan, upon at least ten (10) days' prior written notice to Lender, subject to the following:

(i) In the event Borrower prepays in whole or in part, whether voluntarily or involuntarily, all or a portion of the principal amount hereof, whether with the consent of Lender, because of acceleration or otherwise, Borrower shall pay to Lender, as liquidated damages with respect to interest shortfalls (and not as a penalty) a fee (the "Liquidated Damages"), payable at the time of such prepayment, equal to the present value ("PV") of the Monthly Revenue Shortfall, if any over the remaining term of the Loan; such PV will be determined at the Liquidation Rate and calculated for the months from the Prepayment Date to the Maturity Date in accordance with the following formula:

$$PV = [P \times (R-T)] \times [(1-(1+T)^{-n}) / T]$$

where R = the Fixed Rate; T = the Liquidation Rate; n = the number of months from the Prepayment Date to the Maturity Date; and P = the Principal Prepayment Amount. In the case of a partial prepayment of the principal balance, the calculation of the fee described above shall be made only with respect to that portion which has been prepaid.

"Prepayment Date" means the date on which the unpaid principal balance of the Loan, in whole or in part, is prepaid.

"Monthly Revenue Shortfall" means an amount determined by subtracting the "Liquidation Rate" from the "Fixed Rate," and multiplying such difference, if positive, by the "Principal Prepayment Amount".

"Fixed Rate" means one-twelfth (1/12) of the sum of the ISDA Swap Rate plus 6.25 basis points as determined by Lender to be in effect on the closing date of the Loan for the number of years closest to the original term of the Loan.

"Liquidation Rate" means one-twelfth (1/12) of the result of the ISDA Swap Rate less 6.25 basis points as determined by Lender to be in effect on the Prepayment Date for the number of years closest to the unexpired term of the Loan.

"Principal Prepayment Amount" means the amount of the unpaid principal balance of the Loan that was so prepaid.

"ISDA Swap Rate" means the International Swaps and Derivatives Association mid-market par swap rate (interpolated, if necessary, to provide a rate for maturities not quoted), as published by the Board of Governors of the Federal Reserve System in the Federal Research Statistical Release H.15(519) or, if unavailable, such other substantially equivalent swap rate or index published by a quoting service or commonly available reporting source available to or utilized by Lender.

(ii) Any statement as to the amount of any such Liquidated Damages, setting forth the basis for such Liquidated Damages prepared by Lender and submitted to Borrower, shall be conclusive (absent manifest error) as to the matters set forth herein and the Loan shall not be deemed to have been fully paid or satisfied until all such Liquidated Damages shall have been paid. Borrower shall have the right to prepay the Loan in whole or in part only upon payment of the applicable Liquidated Damages.

For purposes of this prepayment provision, a payment shall be considered a prepayment of principal whether such payment is made by voluntary prepayment, acceleration of the maturity date of this Note, or otherwise.

11. **Appraisal.**

At least ten (10) days prior to the Closing Date, Lender shall obtain, at Borrower's sole cost and expense, an appraisal of the Mortgaged Property prepared by an appraiser selected by Lender. The appraisal shall show an "as is" fair market value of the Mortgaged Property of not less than \$850,000, and shall be subject to Lender's review and approval.

12. **Lender Title Insurance.**

Prior to or on the Closing Date, Lender shall be furnished with a title insurance policy commitment in the amount of the Loan insuring the first lien priority of the Lender's lien issued by a title or abstract insurance company as may be acceptable to Lender, subject only to those exceptions to title as are approved by Lender and its counsel and with affirmative insurance at standard rates on such matters as Lender or its counsel may reasonably require.

13. **Casualty and Flood Insurance.**

Lender shall be furnished at least five (5) days prior to the Closing Date with a fire and casualty insurance policy for the Mortgaged Property having a term of at least one year, which policy shall be in the form of an "all risk", 80% non-reporting policy with fire, extended coverage, vandalism and malicious mischief insurance coverage and such other extended coverage as may be reasonably required by Lender in an amount to be determined by Lender and the appraiser designated by Lender. The insurance is subject to approval by Lender and its counsel as to companies, amounts, forms and expiration dates. If the Mortgaged Property is located in a federally designated flood plain, a flood insurance policy in an amount satisfactory to the Lender shall also be delivered to Lender at or prior to the Closing Date. Citibank, N.A., its successors and/or assigns, P.O. Box 3308 Santa Rosa, CA 95402-3308 shall be named as first mortgagee/loss payee on all such insurance. If the Mortgaged Property is a condominium unit, Lender shall be furnished at least five (5) days prior to the Closing Date with (i) a Certificate of Insurance listing the Property and Casualty Insurance coverage on the entire condominium regime and naming Citibank, N.A., its successors and/or assigns, P.O. Box 3308 Santa Rosa, CA 95402-3308 as first mortgagee/loss payee, and (ii) satisfactory evidence that all common charges for the Mortgaged Property have been paid as of the Closing Date.

14. **Certificates and Survey.**

Lender shall be furnished at least ten (10) days prior to the Closing Date with a permanent certificate of occupancy and all other property certificates from all governmental authorities having or claiming to have

jurisdiction over the Mortgaged Property. Lender shall also be furnished at least ten (10) days prior to the Closing Date with a current or updated survey of the Mortgaged Property certified and acceptable to the title company and to Lender. If Mortgaged Property is a condominium, instead of furnishing Lender with a survey, Lender shall be furnished at least ten (10) days prior to the Closing Date with copies of the condominium documents, which shall include a record plat of the unit or project acceptable to Lender.

15. **Environmental Assessment.**

At least ten (10) days prior to the Closing Date, Lender shall obtain, at Borrower's sole cost and expense, an environmental assessment of the Mortgaged Property prepared by an independent environmental consultant selected by Lender and in form and substance satisfactory to Lender. Lender shall not be obligated to close the Loan if, in the sole opinion of Lender, (a) the past, present or proposed use or occupancy of the Mortgaged Property by Borrower or any current or previous owner or tenant of the Mortgaged Property has resulted or will result in any condition on the Mortgaged Property, which violates any applicable governmental law; (b) any hazardous substance is or will be, or has been used, stored, manufactured, handled, treated or disposed of at the Mortgaged Property or creates or poses any imminent or recognized potential threat to the health or safety of the owners or occupants of, or visitors to, the Mortgaged Property, neighboring property, or to any part of the general public; or (c) without limiting the generality of the foregoing, the existence on the Mortgaged Property of asbestos in any form, condition or quantity.

16. **Financial Reporting/Financial Covenants.**

A) **Reporting Covenants.** During the term of the Loan, Borrower and Guarantors shall deliver, or shall cause to be delivered, to Lender the following financial statements, reports, and/or notices, all of which shall be prepared in accordance with generally accepted accounting principles ("GAAP"), if applicable:

Annual Financial Statements. Promptly upon request of Lender, CPA prepared fiscal year-end financial statements of Borrower and Partnership Guarantors.

Personal Financial Statements of Individual Guarantors. Promptly upon request of Lender, the annual current personal financial statements of each of the Individual Guarantors prepared on Lender's standard form or such other form acceptable to Lender.

Federal Tax Returns (Borrower and Guarantors). Promptly upon request of Lender, current CPA prepared annual Federal Tax Returns of Borrower and of the Guarantors.

Insurance. Notice of any casualty or flood insurance claim for the Mortgaged Property in excess of \$50,000 made by Borrower or any of the Guarantors.

Other Financial Information. Such other financial information respecting the Borrower and Guarantors as Lender may reasonably request.

B) **Financial Covenants.**

NONE.

16A. **Closing Condition.**

Prior to closing, Lender shall be provided with the following:

- (i) 4506-T transcripts for the Borrower and Guarantors which shall be acceptable to Lender in all respects.
- (ii) Payoff letter from existing mortgage holder with interest to the date of closing.

17. **Banking Relationship.**

Borrower shall maintain at all times during the term of the Loan a deposit account ("Account") with Lender which shall have a balance in immediately available funds on the dates on which installments of principal, interest and escrow amounts, if any, are due sufficient to pay the installments due hereunder and Lender is authorized to debit the Account for payment of the installments of principal, interest and escrow amounts, if any, due and owing.

In addition, the Borrower and Partnership Guarantors shall at all times maintain their primary operating Accounts with Lender.

18. **Termination of Commitment.**

The occurrence of one or more of the following events, acts, occurrences or conditions shall permit Lender, at its option, to terminate this commitment: (i) the failure of Borrower to strictly comply with the terms and conditions of this commitment; (ii) the reasonable determination by Lender that a material adverse change has occurred in the financial condition of Borrower or Guarantors, or in the value of any Collateral which is to secure the Loan; (iii) any material misstatement or omission in any information supplied by Borrower or Guarantors to Lender; (iv) if any event occurs which would be with or without the lapse of time or the giving of notice or both, a defined default or event of default under any proposed instrument, agreement or document evidencing, guaranteeing or securing the Loan, or (v) the failure of Borrower to close the Loan on or before the Closing Date. Upon the occurrence of any of the above-described events, Lender may, at its option, terminate this commitment without notice to Borrower or Guarantors, and Lender shall be released from all obligations under this commitment. If Lender elects to terminate this commitment upon the occurrence of any of the above described events, Lender shall retain the non-refundable commitment fee, and Borrower and Guarantors shall be jointly and severally liable and obligated to pay all fees, costs and expenses incurred by Lender as of the date thereof.

19. **Closing Costs.**

Borrower shall pay all costs incurred by Lender in connection with the extension of the Loan, including all fees and expenses of the title company. In the event the Loan fails to close for any reason, Borrower shall pay all costs and expenses incurred by Lender, including the fees of Lender's outside counsel.

20. **Documents and Information.**

All instruments and documents executed in connection with the closing of the Loan shall be in form and substance satisfactory to the Lender's counsel and all legal details in connection with the closing of the Loan shall be satisfactory to the Lender's counsel. You shall furnish to our counsel such documents and information as the Lender's counsel may request in connection with their consideration of such details, including an opinion of Borrower's counsel.

21. **Acceptance By Borrower.** Borrower's acceptance of this commitment shall be effective only upon Lender's receipt of the following:

- Original executed Commitment letter;
- Payment to Lender in the amount of \$1,950.00 representing the non-refundable cost of the appraisal of the Mortgaged Property;
- Payment to Lender in the amount of \$525.00 representing the non-refundable cost of the environmental assessment;
- Payment to Lender in the amount of \$1,000.00 representing a non-refundable legal costs deposit.

In the event Borrower fails to deliver the fully executed original commitment or fails to pay the fees specified above within ten (10) days of the date hereof, this commitment shall be void and may only be reinstated with the written approval of Lender.

22. **Occupancy of the Mortgaged Property.**

The [REDACTED] Guarantors shall occupy not less than fifty-one (51%) percent of the leaseable space at the Mortgaged Property for the operation of their businesses at all times during the term of the Loan. Said occupancy of the Mortgaged Property shall be evidenced by a lease from Borrower to the Partnership Guarantors, which lease shall have a term which is at least co-terminus with the term of the Loan and provides rental payments sufficient to meet any debt service coverage ratio set forth herein.

23. **Closing.**

The closing of the Loan and the execution of all documents required by Lender shall be held on or before October 25, 2017 (the "Closing Date"), at the offices of Lender or such other location to be determined by Lender. If for any reason the Loan does not close by the Closing Date, Lender's obligations hereunder will terminate without further action or notice to Borrower. Lender, at Borrower's request and in Lender's sole discretion, may extend the Closing Date beyond the date specified above.

24. **Governing Law.**

This Commitment shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction.

25. **WAIVER OF JURY TRIAL.**

EACH OF BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT WHICH HE, SHE, AND/OR IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS COMMITMENT.

CITIBANK thanks you for the opportunity to have provided you with this commitment and looks forward to serving your financial needs in the future.

CITIBANK, N.A.

We hereby accept the foregoing Commitment on the terms and conditions set forth therein
this _____, 2017.

By: _____
Name: _____
Title: _____

PLEASE PROVIDE THE LENDER WITH THE FOLLOWING INFORMATION:

YOUR ATTORNEY'S NAME: _____
ADDRESS: _____

TELEPHONE NUMBER: _____
FAX NUMBER: _____
EMAIL ADDRESS: _____



GUARANTY OF ALL LIABILITY

THIS GUARANTY is entered into as of December 18, 2017 by the undersigned (the "Guarantor"), in favor of and for the benefit of [REDACTED], N.A. (the "Bank").

RECITALS

A. The Bank has made and may make, from time to time, loans, advances, extensions of credit and/or other financial accommodations (collectively, the "Loans") for the account of [REDACTED] (the "Borrower").

B. The Guarantor, being affiliated with the Borrower, acknowledges and agrees that the Guarantor has received and will receive direct and indirect benefits from the extension of the Loans made to the Borrower from time to time.

C. The Guarantor wishes to grant the Bank security and assurance in order to secure the payment and performance by the Borrower of all of its present and future Obligations (as that term is defined below), and, to that effect, to guaranty the Borrower's Obligations as set forth herein.

Accordingly, the Guarantor hereby agrees as follows:

1. Guaranty.

(a) The Guarantor hereby unconditionally and irrevocably guarantees to the Bank the full and punctual payment by the Borrower, when due, whether at the stated due date, by acceleration or otherwise of all Obligations (as defined below) of the Borrower, howsoever created, arising or evidenced, voluntary or involuntary, whether direct or indirect, absolute or contingent now or hereafter existing or owing to the Bank, (collectively, the "Guaranteed Obligations"). This Guaranty is an absolute, unconditional, continuing guaranty of payment and not of collection of the Guaranteed Obligations and includes Guaranteed Obligations arising from successive transactions which shall either continue such Guaranteed Obligations or from time to time renew such Guaranteed Obligations after the same has been satisfied. This Guaranty is in no way conditioned upon any attempt to collect from the Borrower or upon any other event or contingency, and shall be binding upon and enforceable against the Guarantor without regard to the validity or enforceability of any document, instrument or agreement evidencing or governing the Obligations or any other agreement or instrument executed in connection therewith (including, without limitation, this Guaranty) or contemplated thereby (each, a "Loan Document" and, collectively, the "Loan Documents"). If for any reason the Borrower shall fail or be unable duly and punctually to pay any of the Guaranteed Obligations (including, without limitation, amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), the Guarantor will forthwith pay the same, in cash, immediately upon demand. As used herein "Obligations" shall mean all obligations, liabilities and indebtedness of the Borrower to the Bank, whether now existing or hereafter created, absolute or contingent, direct or indirect, due or not, whether created directly or acquired by assignment or otherwise, including, without limitation, the Loan and the payment and performance of all other obligations, liabilities, and indebtedness of the Borrower to the Bank under the Loan Documents, including without limitation all fees, costs, expenses and indemnity obligations thereunder.

(b) In the event any Loan Document shall be terminated as a result of the rejection thereof by any trustee, receiver or liquidating agent of the Borrower or any of its properties in any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding, the Guarantor's obligations hereunder shall continue to the same extent as if such Loan Document had not been so rejected.

(c) The Guarantor agrees to pay all costs, expenses (including, without limitation,

attorneys' fees and disbursements) and damages incurred in connection with the enforcement of the Guaranteed Obligations of the Borrower to the extent that such costs, expenses and damages are not paid by the Borrower pursuant to the respective Loan Documents.

(d) The Guarantor further agrees that if any payment made by the Borrower or the Guarantor to the Bank on any Guaranteed Obligation is rescinded, recovered from or repaid by the Bank, in whole or in part, in any bankruptcy, insolvency or similar proceeding instituted by or against the Borrower or Guarantor, this Guaranty shall continue to be fully applicable to such Guaranteed Obligation to the same extent as though the payment so rescinded, recovered or repaid had never originally been made on such Guaranteed Obligation regardless of, and, without giving effect to, any discharge or release of the Guarantor's obligations hereunder granted by the Bank after the date hereof.

2. Guaranty Continuing, Absolute, Unlimited.

The obligations of the Guarantor hereunder shall be continuing, absolute, unlimited and unconditional, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim the Guarantor may have against the Bank or the Borrower or any other person, and shall remain in full force and effect without regard to, and, to the fullest extent permitted by applicable law, shall not be released, discharged or in any way affected by, any circumstance or condition (whether or not any Guarantor shall have any knowledge or notice thereof) whatsoever which might constitute a legal or equitable discharge or defense including, but not limited to, (a) any express or implied amendment, modification or supplement to any Loan Document or any other agreement referred to in any Loan Document; (b) any failure on the part of the Borrower to perform or comply with any Loan Document, or any failure of any other person to perform or comply with any term of any Loan Document; (c) any waiver, consent, change, extension, indulgence or other action or any action or inaction under or in respect of any Loan Document or any other agreement as aforesaid, whether or not the Bank, the Borrower or the Guarantor has notice or knowledge of any of the foregoing; (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Borrower, or its properties or its creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (e) any furnishing or acceptance of additional security or any release of any security; (f) any limitation on the liability or obligations of the Borrower under any Loan Document or any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of any Loan Document; (g) any lien, charge or encumbrance on or affecting the Guarantor's or any of the Borrower's respective assets and properties; (h) any act, omission or breach on the part of the Bank under any Loan Document or any other agreement at any time existing between the Bank and the Borrower or any law or governmental regulation applicable to the Bank or any Loan Document; (i) any claim as a result of any other dealings among the Bank, the Guarantor or the Borrower; (j) the assignment of this Guaranty or any Loan Document to any other person; or (k) any change in the name of the Bank, the Borrower or any other person or entity referred to herein.

3. Waiver.

The Guarantor unconditionally and irrevocably waives, to the fullest extent permitted by applicable law: (a) notice of any of the matters referred to in Section 2 hereof; (b) all notices which may be required by statute, rule of law or otherwise to preserve any rights against the Guarantor hereunder, including, without limitation, notice of the acceptance of this Guaranty, or the creation, renewal, extension, modification or accrual of the Guaranteed Obligations or notice of any other matters relating thereto, any presentment, demand, notice of dishonor, protest, nonpayment of any damages or other amounts payable under any Loan Document; (c) any requirement for the enforcement, assertion or exercise of any right, remedy, power or privilege under or in respect of any Loan Document, including, without limitation, diligence in collection or protection of or realization upon the Guaranteed Obligations or any part thereof or any collateral therefor; (d) any requirement of diligence; (e) any requirement to mitigate the damages resulting from a default by the Borrower under any Loan Document; (f) the occurrence of every other condition precedent to which the Guarantor or the Borrower may otherwise be entitled; (g) the right to require the Bank to proceed against the Borrower or any other person liable on the Guaranteed Obligations, to proceed against or exhaust any security held by the Borrower or any other person, or to pursue any other remedy in the Bank's power whatsoever; (h) the right to have the property of the Borrower first applied to the discharge of the Guaranteed Obligations and (i) any and all rights it may now or hereafter have under any agreement or at law or in equity (including, without limitation, any law subrogating the

Guarantor to the rights of the Bank) to assert any claim against or seek contribution, indemnification or any other form of reimbursement from the Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by the Guarantor under or in connection with this Guaranty or otherwise.

The Bank may, at its election, exercise any right or remedy it may have against the Borrower without affecting or impairing in any way the liability of the Guarantor hereunder and the Guarantor waives, to the fullest extent permitted by applicable law, any defense arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantor against the Borrower, whether resulting from such election by the Bank or otherwise. The Guarantor waives any defense arising by reason of any disability or other defense of the Borrower or by reason of the cessation for any cause whatsoever of the liability, either in whole or in part, of the Borrower to the Bank for the Guaranteed Obligations.

The Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and agrees that the Bank shall not have any duty to advise the Guarantor of information regarding any condition or circumstance or any change in such condition or circumstance. The Guarantor acknowledges that the Bank has not made any representations to the Guarantor concerning the financial condition of the Borrower.

4. Representations and Warranties of the Guarantor.

The Guarantor hereby represents and warrants that:

(a) If not an individual, it is a general partnership, limited partnership, corporation, limited liability company or limited liability partnership (as indicated on the signature page hereto) duly organized or formed, as the case may be, under the laws of the jurisdiction of its incorporation or formation and has all requisite power and authority to enter into this Guaranty and to carry out its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty by the Guarantor have been duly authorized by all necessary action (other than a Guarantor who is an individual) and this Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

(c) If not an individual, it has the power and authority to own its properties and assets and to conduct its business as now being conducted and is duly qualified to do business in every jurisdiction in which the nature of its assets or the conduct of its business requires it to be so qualified.

(d) Neither this Guaranty nor any other Loan Document to which the Guarantor is a party will violate any provision of law, rule or regulation or any order of any court or other governmental agency to which the Guarantor is subject, the organizational documents of the Guarantor, any provision of any agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's properties or assets are bound, or be in conflict with, result in a breach of, or constitute a default under (with or without notice or lapse of time), any such agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any properties or assets of the Guarantor.

(e) No action or approval by or of and no filing or registration with any governmental or public body or authority, or any subdivision thereof, nor the consent of any other person or entity, nor any other legal formality is required in connection with the entering into, performance or enforcement of this Guaranty, except such as have been obtained or taken and with respect to which a copy or other satisfactory evidence thereof has been furnished to the Bank.

5. Security; Events of Default/Setoff.

As security for any and all of the obligations of the Guarantor under this Guaranty, now existing or hereafter arising hereunder or otherwise (collectively, the "Liabilities"), the Guarantor hereby grants to the Bank a lien upon and a security interest in any and all moneys or other property (i.e., goods and merchandise, as well as any and all documents relative thereto; funds, securities, choses in action and any and all other forms of property whether real, personal or

mixed, and any right, title or interest of the Guarantor therein or thereto), and the proceeds thereof, which have been, or may hereafter be, deposited or delivered to the Bank (or with any third party acting on the Bank's behalf) by or for the account or credit of the Guarantor whether for safekeeping, custody, pledge, deposit, transmission, collection or otherwise. All remittances and property shall be deemed delivered to the Bank as soon as put in transit to the Bank by mail or carrier.

Upon the occurrence of any of the following events (each an "Event of Default"):

- (a) the Guarantor defaults under this Guaranty or any Loan Document to which the Guarantor is a party;
- (b) any representation or warranty made by the Guarantor herein or in any other Loan Document to which the Guarantor is a party is false or untrue as of the date such representation or warranty is made;
- (c) the Guarantor commences any case, proceeding, or other action under any law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeks to have an order for relief entered with respect to the Guarantor or seeks to be adjudicated a bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, liquidation, dissolution, composition or other relief with respect to the Guarantor or the Guarantor's debts, or seeks the appointment of a receiver, trustee, custodian, or other similar official for the Guarantor or for all or any substantial part of the Guarantor's property;
- (d) the Guarantor makes a general assignment for the benefit of creditors;
- (e) there is commenced against the Guarantor, any case, proceeding or other action of the type referred to in clause (c) above or seeking the issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of the Guarantor's property, which case, proceeding or other action results in an entry of an order for relief or is not dismissed, discharged or bonded within sixty days of the commencement thereof;
- (f) the Guarantor takes any action indicating the Guarantor's consent to, approval of, or acquiescence in or in furtherance of, any of the acts set forth in clause (c) and (e) above;
- (g) the death or incapacity of a Guarantor, if an individual;
- (h) the Guarantor admits in writing the Guarantor's inability to pay the Guarantor's debts as they mature;
- (i) the Guarantor terminates or dissolves or suspends the Guarantor's usual business activities or conveys, sells, leases, transfers or otherwise disposes of all or a substantial part of the Guarantor's property, business or assets other than in the ordinary course of business;
- (j) the Obligations are not paid when due or demanded; or
- (k) the existence or occurrence at any time of one or more conditions or events which, in the sole opinion of the Bank, has resulted or is reasonably likely to result in a material adverse change in the business, properties or financial condition of the Guarantor;

then, in any of such events any or all of the Liabilities shall, at the Bank's option, become immediately due and payable by the Guarantor, without demand or notice. In addition, upon the occurrence of any Event of Default, the Bank shall be entitled to setoff against and apply to the payment of Guaranteed Obligations the balance of any account or accounts maintained with the Bank or any of the Bank's affiliates by the undersigned and to exercise any other right or remedy granted hereunder or available at law or in equity, including, but not limited to, the rights and remedies of a secured party under the New York Uniform Commercial Code. The Guarantor agrees that in the event that notice is necessary, written notice mailed to the Guarantor at the address given below three business days prior to the date of public sale of

the property subject to the lien and security interest created herein or prior to the date after which private sale or any other disposition of said property will be made shall constitute reasonable notice, but notice given in any other reasonable manner or at any other reasonable time shall be sufficient.

6. **Parties.**

This Guaranty shall inure to the benefit of the Bank and its successors, assigns or transferees, and shall be binding upon the Guarantor and its successors and assigns and heirs and legal representatives. The Guarantor shall not delegate any of the Guarantor's duties under this Guaranty without the prior written consent of the Bank.

7. **Notices.**

Any notice shall be conclusively deemed to have been received by a party hereto and to be effective on the day on which delivered to such party at the address set forth below if hand delivered or sent by Federal Express or other reputable courier of national reputation, or if sent by registered or certified mail, on the third business day after the day on which mailed in the United States, addressed to such party at said address:

(a) if to the Bank, at

[REDACTED]
[REDACTED]
[REDACTED] Commercial Lending Group

(b) if to the Guarantor,

[REDACTED]
[REDACTED]
[REDACTED]

- and -

(c) as to each such party at such other address as such party shall have designated to the other in a written notice complying as to delivery with the provisions of this Section 7.

8. **Right to Deal with the Borrower.**

At any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of the Guarantor hereunder, the Bank may deal with the Borrower in the same manner and as fully as if this Guaranty did not exist and shall be entitled, among other things, to grant the Borrower, without notice or demand and without affecting the Guarantor's liability hereunder, such extension or extensions of time to perform, renew, compromise, accelerate or otherwise change the time for payment of or otherwise change the terms of indebtedness or any part thereof contained in or arising under any Loan Document or any other document evidencing Obligations of the Borrower to the Bank, or to waive any obligation of the Borrower to perform, any act or acts as the Bank may deem advisable.

9. **Delivery of Financial Information.**

The Guarantor shall deliver to the Bank, promptly after a written request therefor, such financial data or information as the Bank may reasonably request from time to time.

10. **Survival of Representations, Warranties, and Agreements.**

All representations, warranties, covenants and agreements made herein, including representations and

warranties deemed made herein, shall survive any investigation or inspection made by or on behalf of the Bank and shall continue in full force and effect until all of the obligations of the Guarantor under this Guaranty shall be fully performed in accordance with the terms hereof, and until the payment in full of the Guaranteed Obligations.

11. **GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.** THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN QUEENS COUNTY OR KINGS COUNTY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST THE GUARANTOR AND RELATED TO OR IN CONNECTION WITH THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT THE GUARANTOR IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS GUARANTY OR ANY DOCUMENT OR ANY INSTRUMENT REFERRED TO HEREIN OR THE SUBJECT MATTER THEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURTS. NOTWITHSTANDING THE FORGOING, THE BANK SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE GUARANTOR OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR AGREES (i) NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT AND (ii) NOT TO ASSERT ANY COUNTERCLAIM, IN ANY SUCH SUIT, ACTION OR PROCEEDING UNLESS SUCH COUNTERCLAIM COULD NOT, BY REASON OF ANY APPLICABLE FEDERAL OR STATE PROCEDURAL LAWS, BE INTERPOSED, PLEADED OR ALLEGED IN ANY OTHER ACTION. THE GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON THE GUARANTOR BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS GUARANTY OR ANY METHOD AUTHORIZED BY THE LAWS OF THE STATE OF NEW YORK. THE GUARANTOR IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY, THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

12. **Miscellaneous.**

(a) If this Guaranty is executed by two or more parties, they shall be jointly and severally liable hereunder, and the word "Guarantor" wherever used herein shall be construed to refer to each of such parties separately, all in the same manner and with the same effect as if each of them had signed separate instruments; and in any such case this Guaranty shall not be revoked or impaired as to any one or more of such parties by the death or dissolution of any of the others or by the revocation or release of any liabilities hereunder of any one or more of such other parties and the Bank may proceed against none, one or more of the Guarantors at one time, or from time to time, in its sole and absolute discretion.

(b) If any term of this Guaranty or any application hereof shall be invalid or unenforceable, the remainder of this Guaranty and any other application of such term shall not be affected thereby.

(c) Any term of this Guaranty may be amended, waived, discharged or terminated only by an instrument in writing signed by the Guarantor and the Bank. No notice to or demand on the Guarantor shall be deemed to be a waiver of the obligations of the Guarantor or of the right of the Bank to take further action without notice or demand as provided in this Guaranty. No course of dealing between the Guarantor and the Bank shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of the Guarantor hereunder. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by the Bank and if so given shall only be effective in the specific instance in which given.

(d) The headings in this Guaranty are for purposes of reference only and shall not limit or define the meaning hereof.

(e) No delay or omission by the Bank in the exercise of any right under this Guaranty shall impair any such right, nor shall it be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

(f) The liability of any Guarantor under this Guaranty may be terminated, but only with respect to Guaranteed Obligations arising subsequent to the effective Date of Termination, upon written notice to that effect, signed and delivered by the Guarantor to the Bank, provided, however, that such termination shall only be effective upon the Bank's receipt thereof. In the event of such termination, the Guarantor shall remain liable with respect to the Guaranteed Obligations prior to date of termination, including any renewals, extensions, modifications thereof, and this Guaranty shall remain in full force and effect as if no such termination has been made.

(g) The execution and delivery of this Guaranty shall not supersede, terminate, modify or supplement in any manner any other Guaranty previously executed and delivered to the Bank by a Guarantor and no release or termination of any Guaranty shall be construed to terminate or release any other Guarantee unless such Guaranty is specifically referred to in any such termination.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Guaranty as of the day and year first above written.

By: _____



GENERAL SECURITY AGREEMENT

Date: December 18, 2017

The undersigned [REDACTED] (herein, whether one or more in number, referred to as "Debtor" and which, if two or more in number, shall be jointly and severally bound) with an address as it appears with the signature below, hereby agree(s) in favor of [REDACTED], a national association having its principal office at 6400 Las Colinas Boulevard, Irving Texas (herein referred to as "Secured Party"), as follows:

1. **Security Interest.**

(a) **Grant of Security.** As security for the Obligations (as defined below), Debtor hereby grants to Secured Party a first priority security interest in all of Debtor's right, title and interest, whether now existing or hereafter arising or acquired, in and to any and all items of personal property described on Schedule A hereto together with all attachments, accessions and equipment now or hereafter affixed thereto or used in connection therewith, all substitutions and replacements thereof and any supporting obligations and products and proceeds thereof (the "Collateral").

(b) **Security for Obligations.** This Security Agreement secures the payment of all now existing or hereafter arising obligations of Debtor to Secured Party, whether primary or secondary, direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or not, liquidated or unliquidated, arising by operation of law or otherwise under any promissory note, guarantee, loan or credit agreement, letter of credit, draft, acceptance, interest rate or foreign exchange agreement, mortgage or other documents evidencing indebtedness whether for principal, interest, fees, expenses or otherwise, together with all costs of collection or enforcement, including, without limitation, reasonable attorneys' fees incurred in any collection efforts or in any action or proceeding (all such obligations being the "Obligations").

(c) **Debtor Remains Liable.** This Security Agreement shall not affect Debtor's liability to perform all of its duties and obligations under the transactions giving rise to the Obligations. The exercise by Secured Party of any of the rights hereunder shall not release Debtor from any of its duties or obligations under the transactions giving rise to the Obligations, which shall remain unchanged as if this Security Agreement had not been executed. Secured Party shall not have any obligation or liability under the transactions giving rise to the Obligations by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(d) **Continuing Agreement.** This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment in full of the Obligations.

2. **Debtor's Title; Liens and Encumbrances.**

Debtor represents and warrants that Debtor is, or to the extent that this Security Agreement states that the Collateral is to be acquired after the date hereof, will be, the owner of the Collateral, having good and marketable title thereto, or has rights in or the power to transfer the Collateral, which is free from any and all liens, security interests, encumbrances and claims. Debtor will not create, assume or permit to exist any such lien, security interest, encumbrance or claim on or against the Collateral except as permitted by this Security Agreement, and Debtor will promptly notify Secured Party of any such other claim, lien, security interest or other encumbrance made or asserted against the Collateral and will defend the Collateral against any such claim, lien, security interest or other encumbrance.

**3. Representations and Warranties;
Location of Collateral and Records;
Business and Trade Names of Debtor.**

(a) Debtor represents and warrants to Secured Party as follows: Debtor's correct legal name is that indicated on the signature page of this Security Agreement and on Schedule I annexed hereto; the state of Debtor's incorporation or organization is that indicated on Schedule I annexed hereto; Debtor has no place of business, offices where Debtor's books of account and records are kept, or places where the Collateral is used, stored or located, except as set forth on Schedule I annexed hereto. Debtor shall promptly notify Secured Party of any change in the foregoing representation; provided, however, that without providing at least thirty (30) days prior written notice to Secured Party, Debtor shall not change its legal name, state of organization or chief executive office. Debtor shall at all times maintain its records as to the Collateral at its chief place of business at the address referred to on Schedule I and at none other. Debtor further covenants that, except for Collateral delivered to Secured Party or an agent for Secured Party, Debtor will not store, use or locate any of the Collateral at any place other than as listed on Schedule I annexed hereto.

(b) Debtor currently uses, and during the last five years has used, no business or trade names, except as set forth on Schedule I annexed hereto. Debtor shall promptly notify Secured Party, in sufficient detail, of any changes in, additions to, or deletions from the business or trade names used by Debtor for billing purposes.

(c) The Collateral is now and will be used in Debtor's business and not for personal, family, household or farming use.

(d) Debtor has paid and will continue to pay or otherwise provide for the payment when due, of all taxes, assessments or contributions required by law which have been or may be assessed or levied against Debtor, whether with respect to any of the Collateral, to any wages or salaries paid by Debtor, or otherwise, and will deliver satisfactory proof of such payment to Secured Party on demand.

(e) The grant of the security interest in the Collateral is effective to vest in Secured Party a valid first priority security interest, superior to the rights of any person in and to the Collateral as set forth herein.

(f) Debtor has not entered into a control agreement in favor of any party, except Secured Party, with respect to Collateral constituting deposit accounts or investment property, nor has Debtor executed in favor of any party, except Secured Party, an assignment of proceeds of any Collateral constituting letter of credit rights or granted to any party, except Secured Party, control pursuant to Section 9-105 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "UCC") of any Collateral constituting electronic chattel paper; and

(g) All inventory, goods and merchandise purchased or manufactured by or on behalf of Debtor, the sale of which gives rise to an account, has been manufactured in conformity with all federal, local and state laws, including the Fair Labor Standards Act and all applicable federal, state and local statutes dealing with the control, shipment, storage or disposal of hazardous materials.

4. Perfection of Security Interest.

Debtor shall execute all such financing statements pursuant to the UCC or other notices appropriate under applicable law, including the Federal Assignment of Claims Act and any state motor vehicles registration statute, as Secured Party may require, each in form satisfactory to Secured Party. Debtor also shall pay all filing or recording costs with respect thereto, and all costs of filing or recording this Security Agreement or any other agreement or document executed and delivered pursuant hereto or to the Obligations (including the cost of all federal, state or local mortgage, documentary, stamp or other taxes), in each case, in all public offices where filing or recording is deemed by Secured Party to be necessary or desirable. Debtor authorizes Secured Party to (i) file any Uniform Commercial Code financing statements or amendments thereto without the signature of Debtor or by signing of Debtor's name to any such financing statements as its attorney-in-fact, in jurisdictions in which Secured Party is unable to file financing statements or amendments without Debtor's signature; (ii) file a photographic or other reproduction of this Security Agreement as a financing statement, (iii) file notices of assignment pursuant to the Federal Assignment of Claims Act, (iv) file

applications for certificates of title or (v) take all other action which Secured Party may deem necessary or desirable to perfect or otherwise protect the liens and security interests created hereunder and to obtain the benefits of this Security Agreement.

Debtor authorizes Secured Party to file one or more financing statements with broader collateral descriptions than that provided in this Security Agreement. Debtor also authorizes Secured Party to file any financing statements that contain any information required by Part 5 of Article 9 of the UCC for the sufficiency of filing office acceptance of any financing statement, including whether the Debtor is an organization, the type of organization, and any organization identification number issued to the Debtor. The Debtor shall also furnish any such information to Secured Party promptly upon request. Debtor also ratifies its authorization for Secured Party to have filed one or more financing statements or amendments thereto if filed prior to the date of this Security Agreement.

5. General Covenants.

Debtor shall:

- (a) furnish Secured Party from time to time, at Secured Party's request, written statements and schedules further identifying and describing the Collateral in such detail as Secured Party may reasonably require;
- (b) advise Secured Party promptly, in sufficient detail, of any substantial change in the Collateral or of the occurrence of any event which would affect the value of the Collateral or Secured Party's security interest therein;
- (c) comply with all acts, rules, regulations and orders of any legislative, administrative or judicial body or official applicable to Debtor or any Collateral or to the operation of Debtor's business except where the failure to comply (i) is non-material and (ii) has no effect on the value of the Collateral or on the ability of Secured Party to exercise its rights and remedies hereunder;
- (d) perform and observe all covenants, restrictions and conditions contained in any agreement or document executed in connection with the Obligations as though the same were fully set forth in this Security Agreement;
- (e) promptly execute and deliver to Secured Party such further agreements or other instruments and take such further action from time to time as Secured Party may deem necessary to perfect, protect or enforce its security interests in the Collateral or otherwise to effect the intent of this Security Agreement;
- (f) keep or cause to be kept the Collateral in good working order and marketable condition, ordinary wear and tear excepted;
- (g) insure the Collateral against loss or damage by fire or other hazards, and extended coverage, theft, burglary, bodily injury and such other risks, with such companies and in such amounts, as is required by Secured Party at any time;
- (h) use the Collateral for lawful purposes only in conformity with all laws, rules and regulations;
- (i) allow Secured Party and its agents, at all reasonable times, to inspect any of the Collateral and to examine and make extracts from Debtor's books and records relating to the Collateral; and
- (j) not assign, sell, mortgage, lease, transfer, pledge, grant a security interest in or lien upon, encumber or otherwise dispose of or abandon, any part or all of the Collateral, without the express prior written consent of Secured Party, except for the sale from time to time in the ordinary course of business of Debtor of such items of Collateral as may constitute part of the business inventory of Debtor.

6. Collateral Covenants.

Further, to insure the attachment, perfection and first priority of and the ability of Secured Party to enforce Secured Party's security interest in the Collateral, the Debtor agrees, in each case at Debtor's own expense, to take the following actions with respect to the following property insofar as such property constitutes Collateral:

(a) Instruments, Promissory Notes, Documents and Tangible Chattel Paper. If the Debtor shall at any time hold or acquire any instruments, promissory notes, documents or tangible chattel paper, the Debtor shall forthwith endorse, assign and deliver the same to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify. The Debtor shall not create any tangible chattel paper without placing a legend on the chattel paper acceptable to Secured Party indicating that Secured Party has a security interest in the chattel paper.

(b) Deposit Accounts. For each deposit account that Debtor at any time opens or maintains, the Debtor shall, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i) cause the depository bank to agree to comply at any time with instructions from Secured Party to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of Debtor, or (ii) arrange for Secured Party to become the customer of the depository bank with respect to the deposit account, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw funds from such deposit account. The provisions of this subparagraph shall not apply to (x) any deposit account for which Debtor, the depository bank and Secured Party have entered into a cash collateral agreement specially negotiated among Debtor, the depository bank and Secured Party for the specific purpose set forth therein, and (y) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Debtor's salaried employees.

(c) Investment Property. If Debtor shall at any time hold or acquire any certificated securities, Debtor shall forthwith endorse, assign and deliver the same to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify. If any securities now or hereafter acquired by Debtor are uncertificated and are issued to Debtor or its nominee directly by the issuer thereof, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i) cause the issuer to agree to comply with instructions from Secured Party as to such securities, without further consent of Debtor or such nominee, or (ii) arrange for Secured Party to become the registered owner of the securities. If any securities, whether certificated or uncertificated, financial assets or other investment property now or hereafter acquired by Debtor are held by Debtor or its nominee through a securities intermediary or commodity intermediary, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (x) cause such securities intermediary to agree to comply with entitlement orders or other instructions from Secured Party to such securities intermediary as to such securities or financial assets or other investment property, without the further consent of Debtor or such nominee, or (y) in the case of financial assets or other investment property held through a securities intermediary, arrange for Secured Party to become the entitlement holder with respect to such investment property, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw or otherwise deal with such investment property.

(d) Collateral in the Possession of a Bailee. If any goods are at any time in the possession of a bailee, Debtor shall promptly notify Secured Party thereof and, if requested by Secured Party, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to Secured Party, that the bailee holds such Collateral for the benefit of Secured Party and shall act upon the instructions of Secured Party, without the further consent of Debtor.

(e) Electronic Chattel Paper and Transferable Records. If Debtor at any time holds or acquires an interest in any electronic chattel paper, Debtor shall promptly notify Secured Party thereof and, at the request of Secured Party, shall take such action as Secured Party may request to vest in Secured Party control, under Section 9-105 of the UCC, of such electronic chattel paper.

(f) Letter of Credit Rights. If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof and, at the request and option of Secured Party, the Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i)

arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit or (ii) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied in reduction of the Obligations, or to be held as Collateral, as Secured Party in its sole discretion shall deem appropriate.

(g) **Commercial Tort Claims.** If Debtor shall at any time hold or acquire a commercial tort claim, Debtor shall immediately notify Secured Party in a writing signed by Debtor of the details thereof and grant to Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Security Agreement, with such writing to be in form and substance satisfactory to Secured Party.

7. **Assignment of Insurance.**

At or prior to the date hereof, Debtor shall deliver to Secured Party certificates of the issuing companies with respect to all policies of insurance owned by Debtor covering or in any manner relating to the Collateral, in form and substance satisfactory to Secured Party, naming Secured Party as an additional insured party as its interests may appear with respect to liability coverage and as loss payee with respect to property and extended insurance coverage, and indicating that no such policy will be terminated, or reduced in coverage or amount, without at least thirty (30) days prior written notice from the insurer to Secured Party. Debtor hereby assigns to Secured Party all sums, including returned or unearned premiums, which may become payable under or in respect of any such policy of insurance, and Debtor hereby directs each insurance company issuing any such policy to make payment of sums directly to Secured Party. Debtor hereby appoints Secured Party as Debtor's attorney-in-fact with authority to endorse any check or draft representing any such payment and to execute any proof of claim, subrogation receipt and any other document required by such insurance company as a condition to or otherwise in connection with such payment, and upon the occurrence of any Event of Default, to cancel, assign or surrender any such policies. All such sums received by Secured Party shall be applied by Secured Party to satisfaction of the Obligations or, to the extent that such sums represent unearned premiums in respect of any policy of insurance on the Collateral refunded by reason of cancellation, toward payment for similar insurance protecting the respective interests of Debtor and Secured Party, or as otherwise required by applicable law.

8. **Fixtures.**

Except to the extent that fixtures are included in the description of the Collateral in Schedule A hereto, it is the intent of Debtor and Secured Party that none of the Collateral is or shall be regarded as fixtures, as that term is used or defined in Article 9 of the UCC, and Debtor represents and warrants that it has not made and is not bound by any lease or other agreement which is inconsistent with such intent. Nevertheless, if the Collateral or any part thereof is or is to become attached or affixed to any real estate, Debtor will, upon request, furnish Secured Party with a disclaimer or subordination in form satisfactory to Secured Party of the holder of any interest in the real estate to which the Collateral is attached or affixed, together with the names and addresses of the record owners of, and all other persons having interest in, and a general description of, such real estate.

9. **Collections.**

(a) Except as otherwise provided herein, Debtor may collect all checks, drafts, cash or other remittances (i) in payment of any of its accounts, contract rights or general intangibles constituting part of the Collateral, (ii) in payment of any Collateral sold, transferred, leased or otherwise disposed of, or (iii) in payment of or on account of its accounts, contracts, notes, drafts, acceptances and all other forms of obligations relating to any of the Collateral so sold, transferred, or leased or otherwise disposed of. All of the foregoing amounts so collected after the occurrence of an Event of Default shall be held in trust by Debtor for and as the property of Secured Party, and shall not be commingled with other funds, money or property of Debtor.

(b) Upon the request of Secured Party, Debtor will immediately upon receipt of all such checks, drafts, cash or other remittances in payment of any of its accounts, contract rights or general intangibles constituting part of the Collateral or in payment for any Collateral sold, transferred, leased or otherwise disposed of, deliver any such items to Secured Party accompanied by a remittance report in form supplied or approved by Secured Party. Debtor shall

deliver such items in the same form received, endorsed or otherwise assigned by Debtor where necessary to permit collection of such items.

(c) Upon the request of Secured Party, Debtor will promptly notify Secured Party in writing of the return or rejection of any goods represented by any accounts, contract rights or general intangibles and Debtor shall forthwith account therefor to Secured Party in cash without demand or notice. Until such payment has been received by Secured Party, Debtor will receive and hold all such goods separate and apart, in trust for and subject to the security interest in favor of Secured Party, and Secured Party is authorized to sell, for Debtor's account and at Debtor's sole risk, all or any part of such goods.

(d) In its discretion, Secured Party may, upon the occurrence of an Event of Default, in its name or Debtor's or otherwise, notify any account debtor or obligor of any account, contract, instrument, chattel paper or general intangible or the securities intermediary of any Collateral consisting of investment property or the custodian of any Collateral consisting of deposit accounts or electronic chattel paper or the issuer of any letters of credit subject to the control of Secured Party included in the Collateral to make payment to Secured Party.

(e) All of the foregoing remittances shall be applied and credited by Secured Party in accordance with the provisions of Section 11(c) of this Security Agreement.

10. Events of Default.

The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") by Debtor under this Security Agreement: (a) if a "Default" or "Event of Default" shall occur under the terms of any agreement giving rise to or executed in connection with the Obligations or if the Obligations are not paid when due or demanded; (b) if at any time Secured Party shall, in its sole discretion, consider the Obligations insecure or any part of the Collateral unsafe, insecure or insufficient, and Debtor shall not on demand furnish other collateral or make payment on account, satisfactory to Secured Party; (c) if Debtor or any obligor, guarantor of or any party to any of the Obligations or the Collateral (the same, including Debtor, being collectively referred to herein as "Obligors") shall default in the punctual payment of any sum payable with respect to, or in the observance or performance of any of the terms and conditions of, any Obligations or of this Security Agreement or any other agreement between any Obligor and Secured Party; (d) if any warranty or representation made to Secured Party by or on behalf of any Obligor is false or misleading in any material respect; (e) if a control agreement has been entered into with respect to investment property or deposit accounts, or the Secured Party has control of letter of credit rights or electronic chattel paper, the termination or purported termination of such control agreement without the Secured Party's consent, or the securities intermediary thereto or the custodian or issuer of the property subject to the control agreement or the issuer of a letter of credit that has been assigned to Secured Party or the custodian of electronic chattel paper in which the Secured Party has been granted a security interest hereunder challenges the validity of or its liability under the control agreement or disputes the assignment of such property to Secured Party or Secured Party's control of such property or any default occurs thereunder; (f) in the event of loss, theft, substantial damage to or destruction of any Collateral, or the making or filing of any lien, levy, or execution on, or seizure, attachment or garnishment of, any of the Collateral; (g) if any of the Obligors being a natural person or any general partner or member of an Obligor which is a partnership or a limited liability company, shall die or (being a partnership, limited liability company or corporation) shall be dissolved, or if any of the Obligors (if an entity) shall fail to maintain its existence in good standing; (h) if any of the Obligors shall become insolvent (however defined or evidenced) or make an assignment for the benefit of creditors, or make or send notice of an intended bulk transfer, or if there shall be convened a meeting of the creditors or principal creditors of any of the Obligors or if a committee of creditors is appointed for any of them; (i) if there shall be filed by or against any of the Obligors any petition for any relief under the bankruptcy laws of the United States now or hereafter in effect or under any insolvency, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity); (j) if the usual business of any of the Obligors shall be terminated or suspended; (k) if any proceedings, procedure or remedy supplementary to or in enforcement of judgment shall be commenced against, or with respect to any property of, any of the Obligors; (l) if any petition or application to any court or tribunal, at law or in equity, be filed by or against any of the Obligors for the appointment of any receiver or trustee for any of the Obligors or any part of the property of any of them; or (m) the existence or occurrence at any time of one or more conditions or events which, in the sole opinion of the Bank, has resulted or is reasonably likely to result in a material adverse change in the business, properties or financial condition of the Debtor.

11. Rights and Remedies.

(a) In the event of the occurrence and continuance of any Event of Default, Secured Party shall at any time thereafter have the right, with or without (to the extent permitted by applicable law) notice to Debtor, as to any or all of the Collateral, by any available judicial procedure or without judicial process, to take possession of the Collateral and without liability for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral, and generally to exercise any and all rights afforded to a secured party under the UCC or other applicable law. Without limiting the generality of the foregoing, Debtor agrees that Secured Party shall have the right to sell, lease, license, or otherwise dispose of all or any part of the Collateral, whether in its then condition or after further preparation or processing, either at public or private sale or at any broker's board, in lots or in bulk, for cash or for credit, with or without warranties or representations, and upon such terms and conditions, all as Secured Party in its sole discretion may deem advisable, and Secured Party shall have the right to purchase at any such sale; and, if any Collateral shall require rebuilding, repairing, maintenance, preparation, or is in process or other unfinished state, Secured Party shall have the right, at its sole option and discretion, and at Debtor's sole cost and expense, to do such rebuilding, repairing, preparation, processing or completion of manufacturing, for the purpose of putting the Collateral in such saleable or disposable form as it shall deem appropriate. At Secured Party's request, Debtor shall assemble the Collateral and make it available to Secured Party at places which Secured Party shall select, whether at Debtor's premises or elsewhere, and make available to Secured Party, without rent, all of Debtor's premises and facilities for the purpose of Secured Party's taking possession of, removing or putting the Collateral in saleable or disposable form. If any of the Collateral consists of motor vehicles, Secured Party may use Debtor's license plates.

(b) Any such sale, lease, license, or other disposition of Collateral may be made without demand for performance or any notice of advertisement whatsoever except where an applicable statute requires reasonable notice of sale or other disposition. Unless the Collateral is perishable or threatens to decline speedily in value or is of the type customarily sold on a recognized market, if notice of intended disposition of any Collateral is required by law, it is agreed that ten (10) days' prior written notice by ordinary mail, postage prepaid of the time and place of any public sale or of the time at which any private sale or other intended disposition is to be made constitutes reasonable notice, unless a shorter period of time is permitted under the UCC. Notwithstanding the foregoing, if any of the Collateral is perishable and may be materially diminished in value during such ten day period, Secured Party shall provide Debtor with such shorter notice as it deems reasonable under the circumstances.

(c) The proceeds of any such sale, lease, license, or other disposition of the Collateral shall be applied first to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like, and to the reasonable attorneys' fees and legal expenses incurred by Secured Party, and then to satisfaction of the Obligations, and to the payment of any other amounts required by applicable law, after which Secured Party shall account to Debtor for any surplus proceeds. If, upon the sale, lease, license or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which Secured Party is legally entitled, Debtor will be liable for the deficiency, together with interest thereon, at the rate prescribed in the agreements giving rise to the Obligations, and the reasonable fees of any attorneys employed by Secured Party to collect such deficiency. To the extent permitted by applicable law, Debtor waives all claims, damages and demands against Secured Party arising out of the repossession, removal, retention or sale of the Collateral.

(d) In addition to the foregoing rights, in the event of the occurrence and continuance of any Event of Default, Secured Party may deliver a notice of exclusive control under any control agreement specifying that Secured Party has the exclusive right to give entitlement orders with respect to investment property covered by such control agreement or to otherwise direct the disposition of any deposit account subject to a control agreement or any electronic chattel paper or letter of credit rights controlled by Secured Party. Secured Party shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may disclaim any warranties of title or the like.

(e) To the extent that applicable law imposes a duty on Secured Party to exercise any remedy in a commercially reasonable manner, Debtor acknowledges and agrees that it is not commercially unreasonable for Secured Party (a) to fail to incur expenses reasonably deemed significant by Secured Party to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for

disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Secured Party against risks of loss, collection or disposition of Collateral or to provide to Secured Party a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Secured Party in the collection or disposition of any of the Collateral. Debtor acknowledges that the purpose of this subparagraph is to provide non-exhaustive indications of what actions or omissions by Secured Party would not be commercially unreasonable in Secured Party's exercise of remedies against the Collateral and that other actions or omissions by Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this subparagraph. Without limitation upon the foregoing, nothing contained in this subparagraph shall be construed to grant any rights to Debtor or to impose any duties on Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this subparagraph, **SECURED PARTY SHALL HAVE NO DUTY OR OBLIGATION TO EXERCISE ANY OF THE AFORESAID RIGHTS AND REMEDIES AND SHALL NOT BE RESPONSIBLE FOR ANY FAILURE TO DO SO, FOR ANY DELAY IN DOING SO OR FOR ANY LOSS IN THE VALUE OF THE COLLATERAL RESULTING FROM SECURED PARTY'S ACTION OR INACTION.**

12. **Costs and Expenses.**

Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Secured Party, in connection with the filing or recording of financing statements and other documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, insurance premiums, encumbrances or otherwise protecting, maintaining or preserving the Collateral and Secured Party's security interest therein, or in defending or prosecuting any actions or proceedings arising out of or related to the transaction to which this Security Agreement relates, shall be paid by Debtor on demand. Until so paid, all such amounts shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the agreements giving rise to the Obligations.

13. **Power of Attorney.**

Debtor authorizes Secured Party and does hereby make, constitute and appoint Secured Party, and any officer or agent of Secured Party, with full power of substitution, as Debtor's true and lawful attorney-in-fact, with power, in its own name or in the name of Debtor to take any of the following action upon the occurrence of an Event of Default: (a) to endorse any notes, checks, drafts, money orders, or other instruments of payment (including payments payable under or in respect of any policy of insurance) in respect of the Collateral that may come into possession of Secured Party; (b) to sign and endorse any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts, and other documents relating to Collateral; (c) to pay or discharge any taxes, liens, security interest or other encumbrances at any time levied or placed on or threatened against the Collateral; (d) to demand, collect, receipt for, compromise, settle and sue for monies due in respect of the Collateral; (e) to receive, open and dispose of all mail addressed to Debtor and to notify the Post Office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate; and (f) generally to do all acts and things which Secured Party deems necessary to protect, preserve and realize upon the Collateral and Secured Party's security interest therein. Debtor hereby approves and ratifies all acts of said attorney or designee, who shall not be liable for any acts of commission or omission, nor for any error or judgment or mistake of fact or law except for its own gross negligence or willful misconduct. This power of attorney shall be

irrevocable for the term of this Security Agreement and thereafter as long as any of the Obligations shall be outstanding.

14. **Notices.**

Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, notices shall be given hereunder by ordinary first class mail, by certified mail or by recognized overnight delivery services to Debtor at its address specified in Schedule I to this Security Agreement as the location where records are kept and to Secured Party at One Court Square, Long Island City, New York 11120, Attn: Legal Department. Notices shall be effective (a) if given by first class mail on the fifth day after deposit in the mails with postage prepaid, addressed as aforesaid; (b) if given by certified mail, on the third day after deposit in the mails with postage prepaid, addressed as aforesaid; (c) if given by recognized overnight delivery service, on the business day following deposit with such service, addressed as aforesaid; provided that all notices to Secured Party shall be effective on receipt.

15. **Other Security.**

To the extent that the Obligations are now or hereafter secured by property other than the Collateral or by the guarantee, endorsement or property of any other person, then Secured Party shall have the right in its sole discretion to pursue, relinquish, subordinate, modify or take any other action with respect thereto, without in any way modifying or affecting any of Secured Party's rights and remedies hereunder.

16. **Further Security.**

To further secure the Obligations, Debtor hereby grants, pledges and assigns to Secured Party a continuing lien on, security interest in and rights of set-off in all money, securities and other property of Debtor, and the proceeds thereof, now or hereafter actually or constructively held or received by or for Secured Party or any affiliate of Secured Party. Debtor hereby authorizes Secured Party to deliver a copy of this Security Agreement to others as written notification of Debtor's transfer of a security interest in the foregoing property. Secured Party is hereby authorized at any time and from time to time, without notice, to apply all or part of such moneys, securities, property, proceeds, deposits or credits to any of the Obligations in such amounts as Secured Party may elect in its sole and absolute discretion, although the Obligations may then be contingent or unmatured and whether or not the collateral security may be deemed adequate.

17. **Miscellaneous.**

(a) Beyond the safe custody thereof, Secured Party shall have no duty as to the collection of any Collateral in its possession or control or in the possession or control of any agent or nominee of Secured Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

(b) No course of dealing between Debtor and Secured Party, or Secured Party's failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Any single or partial exercise of any right, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) All of Secured Party's rights and remedies with respect to the Collateral, whether established hereby or by any other agreements, instruments or documents or by law, shall be cumulative and may be exercised singly or concurrently.

(d) This Security Agreement may be amended or modified only by a writing signed by all of the parties hereto and any provision hereof may be waived only by a writing signed by the Secured Party.

(e) The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

(f) The benefits of this Security Agreement shall inure to the benefit of the successors and assigns of Secured Party. The rights and obligations of Debtor under this Security Agreement shall not be assigned or delegated without the prior consent of Secured Party.

(g) THIS SECURITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES, including without limitation, the UCC. All terms defined in the UCC and used herein shall have the meaning specified in the UCC, unless otherwise defined herein.

(h) Debtor hereby irrevocably consents to the jurisdiction of the courts of the State of New York and of any Federal Court located in such State in connection with any action or proceeding arising out of or relating to the Obligations, this Security Agreement or the Collateral, or any document or instrument delivered with respect to any of the Obligations. Debtor hereby waives personal service of any summons, complaint or other process in connection with any such action or proceeding and agrees that the service thereof may be made by certified mail directed to Debtor at the address provided herein for receipt of notices. Debtor so served shall appear or answer to such summons, complaint or other process within thirty days after the mailing thereof. Should Debtor so served fail to appear or answer within said thirty-day period, Debtor shall be deemed in default and judgment may be entered by Secured Party against Debtor for the amount or such other relief as may be demanded in any summons, complaint or other process so served. In the alternative, in its discretion Secured Party may effect service upon Debtor in any other form or manner permitted by law.

(i) IN THE EVENT OF ANY LITIGATION RELATING TO THIS SECURITY AGREEMENT OR THE OBLIGATIONS, DEBTOR WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY.

IN WITNESS WHEREOF, the Debtor has executed this Security Agreement as of the day and year first written above.

[REDACTED]

By: _____
[REDACTED] m
[REDACTED]

Address:

[REDACTED]
[REDACTED]

SCHEDULE A TO GENERAL SECURITY AGREEMENT DATED DECEMBER 18, 2017

All personal property of Debtor, now owned and hereafter acquired, of every kind and description wherever located, including, without limitation all accounts, general intangibles, chattel paper (whether tangible or electronic), instruments (including promissory notes), documents, goods (including inventory, equipment and fixtures and embedded software and all accessions to any goods); letter of credit rights (whether or not the letter of credit is evidenced by a writing), financial assets and investment property, deposit accounts (whether or not maintained at Secured Party), commercial tort claims, supporting obligations and all products and proceeds of the foregoing and all of Debtor's books and records.

[REDACTED]

By: _____

[REDACTED]

[REDACTED]

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made as of the [REDACTED] day of [REDACTED]

by [REDACTED], a New York limited liability company, having an office at [REDACTED]th
[REDACTED], New York, Assignor/Owner

to [REDACTED], a New York banking corporation, having an office at [REDACTED]
[REDACTED], Mortgagee

WITNESSETH, that whereas the Owner has title to the premises AS DESCRIBED ON SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF;

and the Mortgagee now holds a mortgage thereon made by Owner to Mortgagee dated the date hereof in the principal amount of [REDACTED] which mortgage is intended to be recorded immediately prior hereto, and in order to better secure the payment of the said mortgage and the performance of all of the terms, covenants and conditions of the said mortgage and of the note or other obligation which it secures;

NOW THEREFORE, THIS ASSIGNMENT WITNESSETH, as follows:

1. That the Owner does hereby transfer and assign unto the said Mortgagee and its assigns forever, all of the rents, revenue, issues and profits now due and hereafter to become due from the mortgaged premises above described, and also all leases, sub-leases and rental agreements now or hereafter affecting the said premises together with any and all renewals, extensions, replacements or amendments thereto.

2. The Mortgagee is hereby given and granted full power and authority, as principal:

a) To enter upon and take possession of said premises; to demand, collect and receive from the tenant or tenants now or hereafter in possession of the said premises, or any part thereof, or from other persons liable therefor, all of the rents and revenues from such tenant or tenants or other persons, which may now be due and unpaid and which may hereafter become due; to institute and carry on all legal proceedings necessary for the protection of the above described premises, including such proceedings as may be necessary to recover the possession of the whole or of any part of said premises; to institute and prosecute any and all suits for the collection of rents and all other revenues from said premises which may now be due and unpaid and which may hereafter become due; to institute and prosecute summary proceedings for the removal of any tenant or tenants or other persons from said premises; and to pay the cost and expenses of all such suits and proceedings out of the rents and other revenues received;

b) To maintain said premises and keep the same in repair; to pay, out of the rents and other revenues received, the costs thereof and of services of all employees, including their equipment, and of all expenses of maintaining and keeping said premises in repair and in proper condition, also all interest on the principal sum of the note and mortgage above mentioned, now due and unpaid or hereafter to become due, and all of the principal sum of said note and mortgage now due and unpaid or hereafter to become due, and also all taxes, assessments and water rates now due and unpaid or which may hereafter become due and a charge or lien upon said premises, and to pay interest and principal now due and unpaid or hereafter becoming due on other mortgages affecting the same premises;

c) To execute and comply with all the laws of the State of New York, and also all laws, rules, orders, ordinances and requirements of any and all Governmental Agencies affecting said premises and to pay the costs thereof out of the rents and other revenues received;

d) To rent or lease the whole or any part of said premises for such term or terms and on such conditions as to the said Mortgagee may seem proper;

e) To employ an agent or agents to rent and manage said property and to collect the said rents and other revenues thereof, and to pay the reasonable value of its or their services out of the rents and revenues received;

f) To act exclusively and solely in the place and stead of the Owner, and to have all of the powers as Owner, as possessed by the said Owner, for the purposes aforesaid.

3. The Owner hereby authorizes and empowers the Mortgagee to effect general liability insurance, boiler insurance, plate glass insurance, rent insurance, workers' compensation law insurance, fire insurance and generally such other insurance as is customarily effected by an owner of real property of a style and kind of the premises above described, or as the Mortgagee may deem advisable or necessary to effect, and to pay the premiums and charges therefor out of the said rents and other revenues received.

4. The Mortgagee, in its sole discretion, shall, from time to time, determine to which one or more of the purposes aforesaid the said rents and revenues shall be applied and the amount to be applied thereto.

5. Nothing contained in this instrument shall prejudice or be construed to prejudice the right of the Mortgagee to commence and prosecute, or to prevent the Mortgagee from commencing and prosecuting any action which it may deem advisable, or which it may be entitled to commence and prosecute for the foreclosure of the above mentioned note and mortgage, or to prejudice any other rights of the Mortgagee; nor shall this instrument be construed to waive any defaults now existing or which may occur under said note and mortgage; nor shall this instrument be construed as granting a forbearance or extension of time of payment.

6. This assignment of leases and rents shall be held by the Mortgagee as additional and further security for the payment of the principal amount of the aforesaid mortgage and for the performance of all the terms, covenants and conditions of said note and mortgage, it being understood however, that the Mortgagee shall not apply or enforce this assignment so long as the Mortgagor or other Owner of the property shall fully and promptly pay the items required to be paid by said note and mortgage and provided further that the Mortgagor, beyond all applicable grace, notice or cure periods, or other Owner of the property shall fully and faithfully perform all the terms, covenants and conditions of the said note and mortgage and the leases assigned hereunder; and it being further understood that immediately upon default by the Mortgagor or other Owner of the property in the performance of any of the terms, covenants and conditions of said note and mortgage or immediately upon the failure of the mortgagor or other Owner of the property to make any of the payments required to be made by said note and mortgage beyond all applicable grace, notice or cure periods, or failure to perform its obligation under leases assigned hereunder and upon the occurrence of any default whatsoever beyond all applicable grace, notice or cure periods, the Mortgagee may immediately apply and enforce this assignment and exercise the rights and remedies thereunder, without previous or prior notice to the mortgagor or other Owner of the property; and thereupon this assignment shall be and continue in full force and effect. Any failure or omission to enforce this assignment for any period of time shall not impair the force and effect thereof or prejudice the rights of the Mortgagee, nor shall the Mortgagee be required under this agreement to exercise or enforce any of the rights herein granted to it, all the matters herein contained being strictly discretionary with the said Mortgagee.

7. In pursuance of the provisions of Real Property Law § 291-f, the owner for itself, its successors and assigns, covenants and agrees that it

a) will not orally or in writing cancel, modify, surrender or renew any of such leases or diminish the obligations of the lessees thereunder or release any one or more tenants from their respective obligations under such leases without previous written consent of the Mortgagee;

b) will not institute any proceedings for the dispossession or eviction of the tenant or tenants under any such leases without notifying the Mortgagee thereof;

c) will not assign or pledge said rents or collect from any of the tenants or lessees any rent or rentals for a period of more than one month in advance of the due date thereof without written consent of the Mortgagee;

d) will observe and perform all of the obligations imposed upon the landlord in any such leases and will not do or permit to be done anything to impair the security thereof;

e) will give to the Mortgagee written notice of any sublease or assignment of any such leases given by the tenant.

Any violation of these covenants shall constitute a default under the mortgage, and in such event, the whole amount of the principal then remaining unpaid shall immediately become due and payable. These covenants shall continue in full force and effect until the mortgage debt is paid in full.

8. The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under said leases, or under or by reason of Mortgagee exercising its rights under this agreement, and Owner shall and does hereby agree to indemnify and to hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in said leases or by virtue of its operation, maintenance, control or use of the premises; should the Mortgagee incur any such liability, loss or damage under said leases, under or by reason of this assignment, or the operation, maintenance, use or control of premises, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and Owner shall reimburse the Mortgagee therefor immediately upon demand, and upon the failure of Owner to do so the Mortgagee may declare all sums secured hereby immediately due and payable and/or reimburse itself out of rents collected from tenants.

9. Mortgagee shall not be liable for any act omitted or taken by it under this Assignment, except for gross negligence or bad faith.

10. No security deposits under said lease have been assigned or intended to be assigned.

IN WITNESS WHEREOF, the above instrument has been duly executed by the Owner and, if a corporation, its seal thereunto duly affixed.

ASSIGNOR/OWNER:

By: 
Name: 
Title: 

April __, 2015

[REDACTED] its successors and or assigns

[REDACTED] d

Re: \$400,000.00 Loan originated by [REDACTED], Inc. to [REDACTED] Inc., encumbering the premises known as [REDACTED], [REDACTED], New York (the "Premises").
[REDACTED] Gentlemen:

You have requested my opinion, as counsel for to [REDACTED] (the "Borrower"), in connection with the loan made by you to the Borrower in the amount of \$190,000.00 (the "Loan") on premises located at [REDACTED], New York (the "Premises").

I have examined and I am familiar with each of the documents entitled the Mortgage Note, Mortgage and Security Agreement the Certificate of Borrower, and the Warranty and Indemnification Agreement regarding Governmental and Environmental Compliance, the Guarantee of [REDACTED] and all other instruments executed and delivered by or on behalf of the Borrower in connection with the Loan (collectively the "Loan Documents"), and have attended the closing with respect to the Loan.

In addition to the foregoing, I have examined and relied upon such matters of law, documents and certificates of public officials as I have deemed relevant to the rendering of my opinion. In all such examinations, I have assumed the genuineness of all signatures on original and certified documents and the conformity to original and certified documents of all copies submitted to me as conformed or photostatic copies.

Based upon the foregoing, I am of the opinion that:

1. The Borrower has all the requisite power and authority to own its property and carry on its business as now being conducted.

2. The Borrower has full power and authority to enter into and perform the Loan Documents executed by it, to borrow the Loan, to purchase the Property, and to pledge the collateral and create the security interests and liens provided for in the Loan Documents to be delivered by it, all of which have been duly authorized by all necessary and proper action. No consent or approval by any third party (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of any of the Loan Documents. Maritza Vasquez as president and sole shareholder of Borrower, has full power and authority to execute the Loan Documents on behalf of the Borrower.

3. Each of the Loan Documents has been duly executed and delivered and constitutes the valid and legally binding obligations of the Borrower enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights.

4. To my knowledge after due inquiry, there are no actions, suits, investigations or administrative proceedings of or before any court, arbitrator or governmental authority, pending or threatened against the Borrower or the Premises which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Borrower; or (ii) question the validity of any of the Loan Documents or any action to be taken in connection with the transactions contemplated thereby.

5. To my knowledge, the execution, delivery and performance by the Borrower of the Loan Documents do not and will not violate any provision of any agreement to which the Borrower is a party and do not and will not violate any provisions of any existing statute, rule or regulation, domestic or foreign, and, to my knowledge, do not and will not (i) violate any order, decree or judgment; (ii) violate or conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any agreement, mortgage, indenture or contract to which the Borrower is a party, or by which the Borrower or any of its properties are bound or affected; or (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or assets of the Borrower except as contemplated by the Loan Documents.

6. To my knowledge after due inquiry, the Borrower is not in default with respect to any order, writ, injunction or decree of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency or authority, domestic or foreign, or in violation of any law, statute or regulation, domestic or foreign, to which it is, or any of its properties are, subject except for such defaults or violations which, in the aggregate, will not have a material, adverse effect on the business operations or condition, financial or otherwise, of the Borrower.

7. The Loan, as reflected in the Loan Documents, is not usurious under New York law.

8. This Opinion Letter is delivered by me for the purpose of inducing you to accept delivery of the Loan Documents, and to make the Loan, with full knowledge that in so doing you will rely thereon.

Very truly yours,

By: _____

BORROWER'S CERTIFICATION

██████████ LLC ("Borrower") hereby certifies to ██████████
("Lender") that:

1. Attached to this Certification as Exhibit A is a true and correct copy of the Articles of Organization of the Borrower filed on 4/10/14 with the Secretary of State of the State of New York, and that said Articles of Organization have not been amended, modified, or terminated and remain in full force and effect as of the date hereof;

2. Attached to this Certification as Exhibit B is a true and correct copy of the Operating Agreement of the Borrower, and that said Operating Agreement has not been modified, amended or terminated and remains in full force and effect as of the date hereof; and

3. Attached to this Certification as Exhibit C is a true and correct copy of the New York Secretary of State's filing receipt for the Borrower's Filing Receipt

The foregoing representations are made to Lender with the understanding that Lender shall rely upon this Certification and to induce Lender to make a loan to Borrower in the original principal sum of \$680,000.00.

Dated: as of April 28, 2017

By: 

Name:

Title: Managing Member

CERTIFICATE
(Limited Liability Company)

The undersigned, being the members of [REDACTED] LLC, a New York limited liability company with offices at [REDACTED], [REDACTED], New York [REDACTED] (the "LLC"), in order to induce CITIBANK, N.A., a national banking association (the "Bank"), to make a loan to the LLC in the principal amount of [REDACTED] to be evidenced by a note in that principal amount and secured by, among other things, a first mortgage encumbering the premises located at [REDACTED], [REDACTED], New York, **DO HEREBY CERTIFY:**

1. That the LLC is validly organized and duly existing and in good standing under the laws of the State of New York, that annexed hereto are true and correct and complete copies of the Articles of Organization and the Operating Agreement of the LLC, and all amendments thereto and modifications thereof, and that the same have not been (further) modified or amended or terminated and continue in full force and effect in accordance with their respective terms.

2. That the LLC is hereby authorized to borrow from the Bank the aggregate principal sum of [REDACTED], in one or more borrowings, on the security of such property belonging to the LLC and on such terms as set forth in that certain commitment letter dated April 19, 2017 issued by the Bank to [REDACTED], and on such other terms as [REDACTED], the managing member of the LLC, shall deem to be in the best interest of the LLC, and that, in connection with any such borrowing, such managing member be and he hereby is authorized on behalf and in the name of the LLC, to execute and deliver such commitment letters, loan agreements, negotiable or nonnegotiable promissory notes, pledge agreements, deeds, mortgages, assignments, security agreements, assumption agreements, contracts, receipts and other instruments, and to deliver to the Bank such property of the LLC, as the Bank may require and such managing member shall deem to be necessary or desirable.

3. That [REDACTED], the managing member of the LLC, be and he hereby is authorized to do and perform such acts and things, to sign such documents and certificates and to take all such other action, as he may deem to be necessary or advisable or convenient or proper to perform the obligation of the LLC under any note, agreement or other instrument executed by the LLC in connection therewith.

4. That, unless and until specifically revoked or modified by subsequent written certification adopted by the members of the LLC and until a certified

copy of such certification is delivered to the Bank, the Bank may rely completely on the borrowing authorization conferred by this Certificate, which is intended to be supplementary to all other borrowing certifications heretofore or hereafter adopted by the members of the LLC in connection with the LLC's dealings with the Bank, whether in connection with the opening of any account(s) with the Bank or otherwise.

5. That all transactions heretofore had by the LLC with the Bank, whether in connection with the borrowing of money or otherwise, be and the same hereby are ratified, confirmed and approved.

This Certificate is executed and delivered by the undersigned, as the members of the LLC, in order to induce the Bank to make to the LLC the loan hereinabove referred to in the principal amount of ~~\$425,000.00~~ and this Certificate is made and delivered with the knowledge that the Bank in making the loan to the LLC will rely upon the truth of the statements contained in this Certificate.

IN WITNESS WHEREOF, the undersigned has/have executed this Certificate at Melville, New York, this 19th day of May, 2017.

[REDACTED]

[REDACTED]

ADA AND ENVIRONMENTAL INDEMNITY

THIS ADA AND ENVIRONMENTAL INDEMNITY (this "Agreement"), made as of 28th day of April 2017 by [REDACTED] LLC, a New York limited liability company having an address of [REDACTED], New York [REDACTED] ("Borrower"), and by [REDACTED], having an address [REDACTED], ("Obligor"), jointly and severally (Borrower and Obligor being referred to herein collectively as "Indemnitors" and individually as an "Indemnitor"), in favor of [REDACTED], a banking institution organized and existing under the laws of the State of New York, having an address at [REDACTED], New York [REDACTED], its successors and assigns ("Lender"). All capitalized terms used but not defined herein shall have the meaning set forth in the Mortgage (as hereinafter defined).

WITNESSETH:

WHEREAS, concurrently herewith, Lender has extended to Borrower a loan in the original principal amount of Six Hundred Eighty Thousand Dollars and 00/100 (\$680,000.00) (the "Loan"), which is evidenced by the Note in said amount and secured by (i) that certain Mortgage, dated of even date herewith, given by Borrower to Lender (the "Mortgage"), encumbering, among other things, that certain real properties situated in the County of [REDACTED] State of New York, as more particularly described on Exhibit A attached hereto, together with all buildings and improvements now or hereafter located thereon (collectively, the "Property") and (ii) the other Loan Documents; and

WHEREAS, as a condition to making the Loan, Lender has required that Indemnitors indemnify the Indemnified Parties (as hereinafter defined) with respect to environmental and ADA conditions or liabilities on, in, under or affecting the Property as hereinafter set forth; and

WHEREAS, Obligor is an affiliate of Borrower and will derive substantial economic benefit from Lender making the Loan to Borrower;

NOW, THEREFORE, to induce Lender to extend the Loan to Borrower and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby covenant and agree for the benefit of the Indemnified Parties as follows:

1. Definitions.

The following terms shall have the following meanings when used herein:

(a) "Indemnified Party" shall mean Lender, any subsequent holder of the Loan and each of their officers, directors, shareholders, principals, partners, representatives, employees, agents, successors and assigns.

(b) "Costs" shall mean, collectively, all liens, damages, losses, fines, liabilities (including, without limitation, any strict liability), obligations, settlements, penalties, assessments, citations, directives, claims, litigations, demands, response costs (including, without

limitation, investigation, removal, remediation, mitigation, containment, post-closure and monitoring costs), defenses, judgments, suits, proceedings, costs, laboratory fees, disbursements and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements). Costs shall also include any future reduction in sales price of, or unmarketability and consequent inability of Lender to foreclose on or otherwise sell, the Property and the lost opportunity costs resulting from the inability of Lender to sell or dispose of its interest in the Property, all as a consequence of any event described in Paragraph 2 herein.

(c) "Environmental Laws" shall mean, collectively, any local, state or federal law, rule or regulation or common law duty pertaining to the environment, natural resources, pollution, health, safety or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 et seq.), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing.

(d) "Hazardous Substances" shall mean, collectively, any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls ("PCB's"), petroleum or petroleum by-products or wastes, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents) or any other substances or materials which are identified under or regulated by Environmental Laws.

(e) "Tenants" shall mean all tenants, lessees, subtenants and other occupants of the Property.

(f) "ADA" shall mean the Americans with Disabilities Act of 1990, as amended and supplemented from time to time.

2. Indemnity.

(a) Indemnitors hereby assume liability for, and agree to pay, protect, defend, indemnify and save all Indemnified Parties harmless from and against any and all Costs which may be imposed upon, incurred by or asserted or awarded against any of the Indemnified Parties or the Property, and arising directly or indirectly from: (i) the violation or alleged violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Indemnitors; (ii) the actual or alleged presence, release or threat of release of, or exposure to any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitors; (iii) any actual or alleged personal injury or property damage arising out of or

related to Hazardous Substances and the Property; (iv) any acts or omissions that exacerbate an existing condition at the Property or that give rise to liability under any Environmental Law; (v) the failure by Indemnitors to comply fully with the terms and conditions of this Agreement; (vi) the breach of any representation or warranty contained in this Agreement; (vii) the enforcement of this Agreement; (viii) assessment, investigation, containment, monitoring, remediation and/or removal of any and all Hazardous Substances from the Property or any surrounding areas, and costs incurred to comply with Environmental Laws in connection with the Property or any surrounding areas, and (ix) any past, present or future non-compliance with the ADA.

(b) Notwithstanding any provision hereof to the contrary, Indemnitors shall have no liability under this Agreement with respect to Costs relating to conditions or circumstances which did not exist prior to, and arise solely out of actions, conditions or events occurring after, the earlier of (i) Lender taking actual possession and control of the Property following an Event of Default, and (ii) Lender completing a foreclosure or other sale pursuant to which Lender takes title to the Property. Indemnitors shall have no liability under this Agreement to any Indemnified Party with respect to Costs which result directly and solely from such Indemnified Party's willful misconduct or gross negligence.

(c) Indemnitors' obligation to defend the Indemnified Parties hereunder shall include defense at both the trial and appellate levels and shall be with attorneys, consultants and experts acceptable to the Indemnified Party.

3. Representations Regarding Hazardous Substances. Indemnitors hereby represent and warrant to and covenant and agree with the Indemnified Parties as follows:

(a) The Property and all businesses or operations conducted thereon are in compliance with all Environmental Laws

(b) No Hazardous Substances have been disposed of on or released (as used herein, "release" shall have the meaning provided in 42 U.S.C. § 9601(22)) at, onto or under the Property by any Indemnitor or, to the Indemnitors' best knowledge, after due inquiry and investigation, by any other Person.

(c) No Hazardous Substances are located in, on or under, or have been handled, generated, stored, processed or discharged from the Property by any Indemnitor or, to the Indemnitors' best knowledge, after due inquiry and investigation, by any other Person, except for those substances used by Borrower or tenants of the Property in the ordinary course of their business in compliance with all Environmental Laws and not reasonably expected to give rise to liability under Environmental Laws.

(d) The Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to or arising under Environmental Laws.

(e) There are no underground storage receptacles or surface impoundments, landfills or dumps for Hazardous Substances on the Property.

(f) Indemnitors have received no notice of, and to the best of Indemnitors' knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor do Indemnitors know of any basis for any of the foregoing.

(g) Except as previously disclosed to Lender in writing, there is no asbestos-containing material or lead-based paint at the Property nor are there any PCB's, endangered species' habitats or wetlands at the Property.

(h) Indemnitors have received no notice that, and to the best of Indemnitors' knowledge and belief, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor do Indemnitors know of any basis for such a claim.

(i) Except as previously disclosed in writing to Lender, Indemnitor has not knowingly waived or released any Person's liability with regard to Hazardous Substances in, on, under or around the Property nor retained or assumed, contractually or otherwise, any other Person's liability relative to Hazardous Substances or any claim, action or proceeding relating thereto.

(j) Neither the Property nor any other property owned by Borrower (i) is included or, to Indemnitor's knowledge, after due inquiry, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency (the "EPA") or on any of the inventories of other potential "Problem" sites issued by the EPA or other applicable Governmental Authority nor (ii) otherwise identified by the EPA as a potential CERCLA site or included or, to Indemnitor's knowledge, after due inquiry, proposed for inclusion on any such list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Authority.

(k) Indemnitors shall, and shall cause all property managers, agents, employees and tenants of the Property to: (i) comply with all applicable Environmental Laws applicable to the Property, (ii) keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower or tenants of the Property in the ordinary course of their business), in compliance with, and not likely to give rise to liability under Environmental Laws, (iii) not install or use, or permit the installation or use of, any underground receptacles containing Hazardous Substances on the Property, (iv) expressly prohibit the use, generation, handling, storage, production, release, processing and disposal of Hazardous Substances by all future tenants of the Property (except those substances used by such tenants in the ordinary course of their business, in compliance with, and not likely to give rise to liability under, Environmental Laws) and use all reasonable efforts to prevent existing tenants and other permitted occupants of the Property from taking any such actions, (v) in any event, not install on the Property or permit to be installed on the Property PCB's, urea formaldehyde insulation, asbestos or any substance containing asbestos or any material containing lead-based paint, and (vi) prohibit the disposal and/or release of any Hazardous Substances on, at, beneath, or near the Property.

(l) Indemnitors immediately shall notify Lender in writing should any Indemnitor become aware of (i) any release of Hazardous Substances, or other actual or potential environmental problem or liability, with respect to or affecting the Property, (ii) any lien, action or notice of violation or potential liability affecting the Property or Borrower arising under any Environmental Law, (iii) the institution of any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (iv) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Agreement incorrect in any respect if made at the time of such discovery. Indemnitor shall promptly transmit to Lender copies of any and all citations, orders, notices or, upon written request of Lender, other communications relating to any of the foregoing provisions of this paragraph.

(m) Regardless of the source of contamination, Indemnitors shall, at their own expense, promptly take or cause to be taken all actions necessary or advisable for the clean-up of the Property and other property affected by contamination in, on, under or at the Property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with the all applicable Environmental Laws (and in all events in a manner satisfactory to the applicable Governmental Authority and Lender). Indemnitor shall further pay or cause to be paid, at no expense to any Indemnified Party, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Indemnitors fail to do so, or following an Event of Default, Lender may, at its sole election, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into compliance with Environmental Laws and any cost incurred in connection therewith shall be included in Costs. Borrower hereby grants to Lender access to the Property and an irrevocable license to remove any items deemed by Lender to be Hazardous Substances and to do all things Lender shall deem necessary to bring the Property into compliance with Environmental Laws. However, Lender shall have no obligation to inspect or clean up any Hazardous Substances. Lender shall not be deemed a generator of any Hazardous Substances removed from the Property.

(n) Upon the request of Lender, at any time (i) after the occurrence of a default under this Agreement or an Event of Default or (ii) Lender has reasonable grounds to believe that (x) Hazardous Substances are or have been released, stored or disposed of on or around the Property or (y) the Property may be in violation of Environmental Laws, Indemnitors shall cause an investigation or audit of the Property to be undertaken by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender to determine whether any Hazardous Substances are located on, at, beneath, or near the Property and/or whether the Property is in compliance with Environmental Laws. The scope of any investigation or audit shall be approved by Lender. If Indemnitors fail to provide reports of such investigation or audit within thirty (30) days after such request, Lender may, but shall have no obligation to, order the same. Borrower hereby grants to Lender and Lender's contractors access to the Property and an irrevocable license to undertake such investigation or audit. All costs of any such investigation or audit shall be included in Costs and shall be paid by Indemnitors in accordance with the terms of Paragraph 5(c) hereof.

(o) In the event that a Lien is filed against the Property pursuant to any Environmental Law, Indemnitors shall, within thirty (30) days from the date that Borrower receives notice of such Lien (but in any event ten (10) days prior to the date of any contemplated sale pursuant to such Lien), either (i) pay the claim and remove the Lien from the Property, or (ii) furnish (A) a bond satisfactory to Lender in the amount of the claim out of which the Lien arises, (B) a cash deposit in the amount of the claim out of which the Lien arises, (C) other security reasonably satisfactory to Lender in an amount sufficient to discharge the claim out of which the Lien arises, or (D) security in a form and amount satisfactory to the applicable Governmental Authority pursuant to a valid consent or other order, and Indemnitors shall promptly arrange for the removal of the Lien. Notwithstanding the foregoing, Indemnitors shall prevent a sale pursuant to any Lien.

(p) The amount of Indemnitors' liability hereunder is unrelated to the amount of the Loan and any failure of the Loan to be repaid in full. The enforcement of this Agreement by the Indemnified Parties shall not be construed by Indemnitors as an indirect attempt to recover any Loan deficiency or loss relating to the failure of the Loan to be repaid in full. Indemnitors acknowledge that they may have liability hereunder even if the Loan is repaid in full by reason of a full credit bid at any foreclosure sale under the Mortgage, and that the amount of Indemnitor's liability hereunder could exceed the entire amount paid by Borrower for the Property.

4. Representations Regarding ADA Compliance. Indemnitors hereby represent and warrant to and covenant and agree with the Indemnified Parties as follows:

(a) The Property shall at all times comply with all requirements of the ADA.

(b) Indemnitors shall, at their sole cost and expense, comply with all reasonable written requests of the Indemnified Party to (i) effectuate compliance with the ADA and (ii) comply with any directive from any governmental authority relating to ADA compliance;

(c) The Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to or arising under the ADA.

(d) Indemnitors have received no notice of, and to the best of Indemnitors' knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under the ADA with respect to any condition, use or operation of the Property, nor do Indemnitors know of any basis for any of the foregoing.

(e) Indemnitors shall immediately notify the Indemnified Party in writing should any Indemnitor become aware of (i) any non-compliance with the ADA related in any way to the Property, (ii) any written or oral notice or other communication of which Indemnitor becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to the ADA or compliance therewith, possible liability pursuant to the ADA, (iii) the institution of any investigation, inquiry or proceeding concerning the Borrower or the

Property pursuant to the ADA, or (iv) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Agreement incorrect in any respect if made at the time of such discovery. Indemnitor shall promptly transmit to Lender copies of any and all citations, orders, notices or, upon written request of Lender, other communications relating to any of the foregoing provisions of this paragraph.

(f) Upon the request of Lender, at any time (i) after the occurrence of a default under this Agreement or an Event of Default or (ii) Lender has reasonable grounds to believe that the Property is not in compliance with the ADA, upon reasonable notice from the Lender, Indemnitors shall, at the Indemnitors' expense, promptly cause an engineer or consultant, reasonably satisfactory to the Lender, to conduct an ADA assessment reasonably required by the Lender (the scope of which shall be determined in the sole and absolute discretion of the Lender exercising commercially reasonable judgment) and promptly deliver the results of any such assessment to the Lender. If Indemnitors fail to provide Lender with the results of such assessment within thirty (30) days of such request, Lender may, but shall have no obligation to, order the same. Indemnitor shall cooperate with and provide the Lender and any person or entity designated by the Lender with access to the Property to determine if the Property is in compliance with the ADA, and to conduct any required assessment. All costs of any such investigation or assessment shall be included in Costs and shall be paid by Indemnitors in accordance with the terms of Paragraph 5(c) hereof.

5. Indemnification Procedures.

(a) If any action, proceeding, litigation or claim shall be brought or asserted against any Indemnified Party for any matter which the Indemnified Parties are indemnified hereunder (each, a "Claim"), Indemnified Party shall notify Indemnitors in writing thereof and Indemnitors shall promptly assume the defense thereof, including, without limitation, the employment of counsel acceptable to such Indemnified Party and the negotiation of any settlement. Any failure of such Indemnified Party to notify Indemnitors of such matter shall not impair or reduce the obligations of Indemnitors hereunder. The Indemnified Parties shall have the right, at the expense of Indemnitors (which expense shall be included in Costs), if an Indemnified Party has reason to believe that its interests are not being adequately represented or diverge from other interests being represented by such counsel, to employ separate counsel in any such action and to participate in the defense thereof. In the event Indemnitors shall fail to discharge or undertake to defend any Indemnified Party against any Claim, such failure shall constitute an Event of Default and the Indemnified Party may, at its sole election, defend or settle such Claim. The liability of Indemnitors to such Indemnified Party hereunder for any settlement by such Indemnified Party shall be conclusively established by any settlement entered into by the Indemnified Party in good faith, and such good faith shall be conclusively established if the settlement is made on the advice of independent legal counsel for the Indemnified Party. The amount of Indemnitors' liability hereunder shall include the settlement consideration and all other Costs, which shall be paid by the Indemnitors as hereinafter provided. Costs incurred in connection with a Claim shall be reimbursed by Indemnitors without the requirement of waiting for the ultimate outcome of such Claim.

(b) Indemnitors shall not, without the prior written consent of the Indemnified Party, settle or compromise any Claim in any manner or consent to the entry of any judgment (i) in which the claimant or plaintiff does not unconditionally release the Indemnified Party from all liability and obligations in respect of such Claim and obtain a dismissal of such Claim with prejudice; or (ii) that may adversely affect the Indemnified Party (as determined in the sole discretion of such Indemnified Party) or obligate the Indemnified Party to pay any sum or perform any obligation.

(c) Indemnitors shall pay to the applicable Indemnified Party any and all Costs within ten (10) days after written notice from such Indemnified Party. All Costs shall be immediately reimbursable to the Indemnified Party or, upon request of the Indemnified Party, paid directly to the party sending a bill or other statement to the Indemnified Party. Any Costs not paid within the aforementioned ten (10) day period shall bear interest at the Default Rate from the date incurred until the date paid in full.

6. Reinstatement of Obligations. If at any time all or any part of any payment received by an Indemnified Party pursuant to this Agreement shall be rescinded or returned for any reason whatsoever, including, without limitation, the insolvency, bankruptcy or reorganization of any Obligor or Borrower, then the obligations of Indemnitors hereunder shall, to the extent of such rescinded or returned payment, be reinstated and shall continue as though such previous payment received by the Indemnified Party had never occurred.

7. Waivers by Indemnitors. To the extent permitted by law, Indemnitors hereby waive and agree not to assert or take advantage of:

(a) Any right to require an Indemnified Party (i) to proceed against Borrower or any other Person, (ii) to proceed against or exhaust any security held by any Indemnified Party at any time or (iii) to pursue any other remedy in such Indemnified Party's power or under any other agreement, in any case, before proceeding against Indemnitors hereunder;

(b) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or the failure of an Indemnified Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person;

(c) Demand, presentment for payment, protest and notice of protest, demand, dishonor and nonpayment and all other notices except as expressly required in the Loan Documents, including, without limitation, notice of new or additional indebtedness or obligations or of any action or non-action on the part of Borrower, Lender, any endorser or creditor of Borrower or of Indemnitor or of any other Person whomsoever under this Agreement or any other Loan Document;

(d) Any defense based upon an election of remedies, splitting a cause of action or merger of judgments by any Indemnified Party;

(e) Any right or claim of right to cause a marshaling of the assets of Indemnitors;

(f) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Agreement;

(g) Any duty on the part of any Indemnified Party to disclose to Indemnitors any facts such Indemnified Party may now or hereafter know about Borrower or the Property, regardless of whether such Indemnified Party (i) has reason to believe that any such facts materially increase the risk beyond that which Indemnitors intend to assume, (ii) has reason to believe that such facts are unknown to Indemnitors or (iii) has a reasonable opportunity to communicate such facts to Indemnitors, it being understood and agreed that Indemnitors are fully responsible for being informed of the financial condition of Borrower, the condition of the Property and of all other circumstances bearing on the risk that liability may be incurred by Indemnitors hereunder;

(h) Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Loan Documents;

(i) Any lack of commercial reasonableness in dealing with the collateral for the Loan;

(j) Any deficiencies in the collateral for the Loan or any deficiency in the ability of Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(k) An assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon the voluntary or involuntary bankruptcy proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now existing or hereafter acquired, which Lender may have against Obligor, the Borrower or the collateral for the Loan;

(l) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise; and

(m) Any action, occurrence, event or matter consented to by Indemnitors under Section 8(k) hereof, under any other provision hereof, or otherwise.

Borrower and Obligor covenant and agree that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, neither Borrower nor Obligor shall seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the

Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Borrower or Obligor by virtue of this Agreement or otherwise.

8. General Provisions.

(a) Full Recourse. Notwithstanding any provision of any other Loan Document to the contrary, all of the terms and provisions of this Agreement are recourse obligations of Indemnitors and not restricted by any limitation on personal liability.

(b) Right to Indemnification Not Affected by Knowledge. An Indemnified Party's right to defense, indemnification, payment of Costs or other rights and remedies pursuant to this Agreement shall not be diminished or affected in any way by any investigation conducted by or on behalf of such Indemnified Party or other knowledge acquired (or capable of being acquired) by such Indemnified Party through any means at any time.

(c) Reliance. Indemnitors hereby acknowledge that Lender would not make the Loan without being able to rely upon the covenants and obligations of Indemnitors set forth herein. Accordingly, Indemnitors intentionally and unconditionally enter into this Agreement.

(d) Obligations Unsecured. Indemnitors acknowledge that even though the representations, warranties and covenants of Indemnitors contained herein may be identical or substantially similar to those of Borrower set forth in the Mortgage, the obligations of Indemnitors hereunder are independent obligations which are not secured by the Mortgage or other Loan Documents. The Indemnitors further acknowledge that it is the intent of Lender to create separate obligations of Indemnitors hereunder which can be enforced against Indemnitors without regard to the existence of the Mortgage or other Loan Documents or the liens or security interests created therein.

(e) Survival. This Agreement shall be deemed to be continuing in nature, remain in full force and effect and survive indefinitely, notwithstanding the exercise of any remedy by Lender under the Mortgage or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loan is paid or satisfied in full.

(f) Subordination; No Recourse Against Lender. Obligor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Obligor to all indebtedness of Borrower to Lender. Obligor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of Obligor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral for the Loan. Further, Indemnitors shall not have any right of recourse against any Indemnified Party by reason of any action such Indemnified Party may take or omit to take under the provisions of this Agreement or any other Loan Documents.

(g) Reservation of Rights. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to cost recovery or contribution, which any Indemnified Party may have against either Indemnitor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. § 9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(h) Financial Statements. Each Indemnitor hereby agrees to furnish Lender promptly upon demand by Lender current and dated financial statements detailing the assets and liabilities of such Indemnitor, certified by such Indemnitor, in form and substance acceptable to Lender. Each Indemnitor hereby warrants and represents to Lender that any and all balance sheets, net worth statements and other financial data which have heretofore been given or may hereafter be given to Lender with respect to such Indemnitor did or will at the time of such delivery fairly and accurately present the financial condition of such Indemnitor.

(i) Nature of Obligations. The obligations of Indemnitors hereunder are independent of the obligations of Borrower under the other Loan Documents. In the event of any default hereunder, a separate action or actions may be brought and prosecuted against Indemnitors whether or not Indemnitors are the alter ego of Borrower and whether or not Borrower is joined therein or a separate action or actions are brought against Borrower. Lender's rights hereunder shall not be exhausted until all of the obligations of Indemnitor hereunder have been fully paid and performed.

(j) No Limitation on Liability. Indemnitors hereby consent and agree that any of the following may occur from time to time, without notice or consideration to, or consent of, Indemnitors, and the liability of Indemnitors hereunder shall remain unconditional and absolute and shall in no way be impaired or limited by reason thereof:

(i) any extension of time for performance required by any of the Loan Documents or otherwise granted by Lender or any extension or renewal of the Note;

(ii) any sale, assignment or foreclosure of the Note, the Mortgage or any of the other Loan Documents or any sale or transfer of the Property;

(iii) any change in the composition of Borrower, including, without limitation, the voluntary or involuntary withdrawal or removal of Indemnitors from any current or future position of ownership, management or control of Borrower;

(iv) any representations and warranties made by any Indemnitor herein or by Borrower in any of the Loan Documents;

(v) the release of Borrower or of any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise;

(vi) the release or substitution in whole or in part of any security for the Loan;

(vii) Lender's failure to record the Mortgage or to file any financing statement (or Lender's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan;

(viii) the modification of the terms of any one or more of the Loan Documents; or

(ix) the taking or failure to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course of dealing with Borrower or any other Person, shall limit, impair or release Indemnitor's obligations hereunder, affect this Agreement in any way or afford Indemnitors any recourse against any Indemnified Party. Nothing contained in this Section shall be construed to require any Indemnified Party to take or refrain from taking any action referred to herein.

(k) Representations. Each Indemnitor represents and warrants that there is no bankruptcy, reorganization or insolvency proceeding pending or, to its knowledge, threatened against it.

(l) Attorneys' Fees. In the event it is necessary for any Indemnified Party to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion hereof, Indemnitors agree to pay to such Indemnified Party any and all costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and disbursements, incurred by such Indemnified Party as a result thereof and all such amounts shall be included in Costs.

(m) Successive Actions. A separate right of action hereunder shall arise each time an Indemnified Party acquires knowledge of any matter indemnified or guaranteed by Indemnitors hereunder. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time and no action hereunder shall preclude any subsequent action.

IN WITNESS WHEREOF, Indemnitors have executed this Agreement as of the day and year first above written.

BORROWER:

EX-10.39 6 dex1039.htm FORM OF STOCK PLEDGE AGREEMENT

Exhibit 10.39

STOCK PLEDGE AGREEMENT

THIS STOCK PLEDGE AGREEMENT (this "**Agreement**"), dated as of _____, 2006, is entered into by and between [NAME], an individual ("**Pledgor**"), and [REDACTED], a [REDACTED] corporation ("**Secured Party**").

RECITALS

A. Pledgor has executed that certain Promissory Note in the aggregate principal amount of [AMOUNT] (\$[XXX]), dated of even date herewith, in favor of Secured Party (the "**Note**").

B. Pledgor is the owner of shares of Common Stock of [REDACTED], as set forth on Schedule A hereto (the "**Shares**").

C. Pledgor has agreed to pledge the Shares, together with any securities received by Pledgor in connection with any merger or reorganization with respect to such shares (the "**Pledged Shares**"), to Secured Party pursuant to the terms of the Note, and to enter into this Agreement in order to secure its obligations to Secured Party under the Note.

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

1. **Pledge of Stock**. Pledgor hereby pledges, grants a security interest in, assigns, transfers and delivers unto Secured Party and its successors and assigns the Pledged Shares as collateral security for the payment and performance by Pledgor of the Obligations (as defined under Section 2 hereof). Pledgor has, concurrently herewith, delivered to Secured Party the stock certificate evidencing the Pledged Shares together with appropriate stock powers executed in blank in the form of Exhibit A, attached hereto. The Pledged Shares shall be referred to herein as the "**Collateral**."

2. **Obligations Secured**. This Agreement is made and the pledge herein is given to secure Pledgor's payment and performance of any and all obligations, liabilities and indebtedness of Pledgor to Secured Party pursuant to the terms of the Note and this Agreement (collectively, the "**Obligations**").

3. **Representations and Warranties of Pledgor**. Pledgor hereby represents and warrants to Secured Party as follows:

3.1 **Ownership of the Pledged Shares**. Pledgor is and shall be the beneficial and record owner of the Pledged Shares.

3.2 Liens, Claims, Encumbrances, Etc. Pledgor owns the Pledged Shares free and clear of any material liens, claims, encumbrances or security interests of any kind or nature whatsoever.

3.3 Authority. Pledgor is not precluded in any manner whatsoever from executing, and has the requisite authority to execute, this Agreement and to pledge, transfer and grant a security interest and lien in the Collateral as contemplated herein, without the approval or authorization of any other person, including any governmental or regulatory authority whatsoever.

3.4 First Priority Lien. The pledge, assignment and delivery of the Collateral pursuant to this Agreement will create a valid first priority lien on and a first priority perfected security interest in the Collateral pledged by Pledgor, and the proceeds thereof, securing the payment of the Obligations.

3.5 Due Authorization. This Agreement has been duly authorized, executed and delivered by Pledgor and constitutes a legal, valid and binding obligation of Pledgor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles.

4. Covenants of Pledgor. Pledgor hereby, covenants and agrees as follows:

4.1 Sale, Encumbrance, Etc. Pledgor shall not sell, contract to sell, encumber, hypothecate or permit or suffer any attachment, security interest, lien or other encumbrance or judgment or other judicial or involuntary lien against, or otherwise dispose of, the Collateral or any part thereof, unless Pledgor shall have obtained the prior written consent of Secured Party.

4.2 Defense of Collateral. Pledgor shall defend, at Pledgor's sole cost and expense, the Collateral against any and all liens, charges, security interests and other encumbrances.

5. Events of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default") under this Agreement:

5.1 Default under Note. Pledgor shall fail to make a payment due under the Note following the applicable cure period.

5.2 Default on the Obligations. Pledgor shall default in the performance or observance of any of the Obligations, other than Obligations under the Note, and such default shall not have been cured within thirty (30) days after Pledgor's receipt of written notice thereof from Secured Party.

5.3 Breach of Representation or Warranty. Any representation or warranty made by Pledgor herein shall be false in any material respect and such default shall not have been cured within thirty (30) days after Pledgor's receipt of written notice thereof from Secured Party.

6. Rights of Secured Party Upon Default.

6.1 Rights and Remedies of Secured Party. In the event of any Event of Default, Secured Party shall be entitled, without further notice to Pledgor, and without necessity for legal proceedings, to sell any or all of the securities serving as Collateral and, if any of the Obligations remains unsatisfied following such foreclosure, to seek payment of such unsatisfied amount from Pledgor pursuant to the terms of the Note. In addition, and not by way of limitation of the foregoing, Secured Party shall have any or all remedies provided by law, including, but not limited to, all rights and powers of a secured party after default pursuant to the California Commercial Code.

6.2 Application of Proceeds of Sale, etc. The proceeds of any sale or other disposition of, or any collection of or realization on, any of the Collateral, shall be applied by Secured Party from time to time to pay: (a) first, all costs, fees and expenses paid or incurred by Secured Party in connection with the exercise, protection or enforcement of Secured Party's rights and remedies hereunder, (b) second, the entire indebtedness due Secured Party under the Note, and (c) third, the excess, if any, shall be paid to Pledgor or to whomever is then legally entitled to receive the same.

7. Termination of Agreement. Upon payment in full of any and all Obligations, this Agreement and the security interest created hereby in favor of Secured Party shall terminate and Secured Party shall return all of the Collateral then in its possession to Pledgor.

8. Amendments. The provisions of this Agreement may not be waived, altered, amended or repealed in whole or in part except by the written consent of the parties hereto.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

10. Waiver. The failure or delay on the part of any party hereto to exercise any right, remedy, power or privilege shall not operate as a waiver thereof. Any waiver must be in writing and signed by the party making such waiver. A written waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

11. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, and permitted successors and assigns.

12. Necessary Acts. Each party hereto shall perform any further acts and execute and deliver any additional agreements, assignments or documents that may be reasonably necessary to carry out the provisions or to effectuate the purposes of this Agreement.

13. **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the internal laws of the State of [REDACTED]

14. **Attorneys' Fees and Costs.** If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party, whether or not such party has instituted the action, shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and other costs incurred in such action or proceeding, in addition to any other relief to which it may be entitled.

15. **Notices.** All notices and other communications required or which may be given hereunder shall be in writing and shall be deemed effectively given or received for all purposes only (i) when presented personally, (ii) on receipt when mailed by U.S. first class mail, registered or certified, postage prepaid, return receipt requested, (iii) one day after being sent if sent by professional overnight courier or messenger service, or (iv) on the date of transmission if sent by telecopy or other means of electronic transmission, with receipt confirmed by answer back or otherwise, at the address indicated on the signature page to this Agreement (or addressed as any party may subsequently designate by notice in accordance with this Section 15).

16. **Headings and Captions.** The headings and captions used herein are solely for the purpose of reference only and are not to be considered in connection with the construction or interpretation of this Agreement.

17. **Assignment.** Secured Party may assign, endorse or transfer any instrument evidencing all or any part of the Obligations, and the holder of such instrument shall be entitled to the benefits of this Agreement.

18. **Entire Agreement.** This Agreement, together with the documents referenced herein, contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

IN WITNESS WHEREOF, Pledgor and Secured Party have duly executed this Stock Pledge Agreement as of the day and year first above written.

"Pledgor"

[INDIVIDUAL]

"Secured Party"

corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto MASIMO CORPORATION, a Delaware corporation (the "Company"), [NUMBER] shares of common stock of the Company standing in the name of the undersigned on the books of the Company; the attached certificate number ____ reflects the total number of shares of common stock held by the undersigned; and the undersigned does hereby irrevocably constitute and appoint the Secretary of the Company as attorney to transfer such stock on the books of the Company with full power of substitution.

Dated:

By: _____
[NAME OF PLEDGOR]

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Schedule A

Stock Certificate No. [ZZZ], representing [WWW] shares of Common Stock of Masimo Corporation issued in the name of [INDIVIDUAL].

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SUBORDINATION AGREEMENT

In order to induce [REDACTED] (the "Bank") to extend or continue to extend credit, or to make or continue to make, directly or indirectly, as principal, guarantor or otherwise, financial accommodations, to or for [REDACTED] (the "Borrower/Guarantor"), the undersigned (the "Subordinated Party") represents and agrees as follows:

1. **Subordination.** The Subordinated Party hereby subordinates all indebtedness and obligations of any kind (including, without limitation, interest thereon, and whether direct or indirect, absolute or contingent) which are now or may at any time hereafter be owing to the Subordinated Party by the Borrower/Guarantor (called the "Subordinated Debt"), in favor of all obligations of any kind and indebtedness (including, without limitation, interest thereon, and whether direct or indirect, absolute or contingent) which are now or may at any time hereafter be owing by the Borrower/Guarantor to the Bank (called the "Bank Debt").

2. **Extent of Subordinated Debt.**

(a) The Subordinated Debt consists of the following:

(Amount and Maturity)

(Security, If Any)

There is and will be in the future (without the Bank's prior written consent) no other indebtedness, obligation, guarantee, or liability of the Borrower/Guarantor to the Subordinated Party, direct or indirect, contingent or otherwise, and no claim of the Subordinated Party against the Borrower/Guarantor other than the Subordinated Debt as specified in this Section 2(a) or as permitted pursuant to Section 7 of this Agreement. At the request of the Bank, the Subordinated Party will provide additional information from time to time regarding any changes in the Subordinated Debt.

(b) Any note or other negotiable instrument which represents any part or all of the Subordinated Debt has been clearly marked that its enforcement and collection are subject to all the terms and provisions of this Agreement, and such notes or instruments have been delivered to the Bank to hold for the Subordinated Party subject to the terms of this Agreement. If no evidence of indebtedness is or shall be issued, an entry will be made immediately next to the entry of such indebtedness both in the books of Borrower/Guarantor and Subordinated Party stating that payment is subordinated to the Bank Debt.

3. **Payments.** (Check appropriate box. If neither box is marked, option (a) is deemed to have been chosen by the parties.)

- ☐ (a) As security for the payment of the Bank Debt, the Subordinated Party hereby directs the Borrower/Guarantor to pay to the Bank all amounts now or hereafter payable with respect to the Subordinated Debt, to be applied to the payment of the Bank Debt until said Bank Debt is paid in full. The Subordinated Party shall not ask, demand, sue for, collect, take, or receive from the Borrower/Guarantor the whole or any part of the Subordinated Debt without the prior written consent of the Bank. In the event that the Subordinated Party receives, directly or indirectly, any property or any sum on account of the Subordinated Debt, whether such shall be proceeds of any security or collateral held or received by the Subordinated Party or otherwise, such payment shall be held by the Subordinated Party in trust for the Bank and shall be promptly paid to the Bank to be applied -for the account of the Borrower/Guarantor.

- ☒ (b) So long as no event of default has occurred with respect to the Bank Debt, the Subordinated Party may continue to receive scheduled payments of interest only with respect to the Subordinated Debt, but may not accept prepayments, demand payment in full, or accelerate maturity of the Subordinated Debt without prior written consent of the Bank. In the event, however, that an event of default occurs with respect to the Bank Debt, Section 3(a) of this Agreement shall immediately become of full force and effect and the Subordinated Party shall be bound by the same.

4. Restrictions With Respect To The Subordinated Debt. Unless and until this Agreement ceases to be effective pursuant to Section 8 hereof, the Subordinated Party shall not, without the prior written consent of the Bank:

- (a) take or receive any security or collateral for the Subordinated Debt not now held by the Subordinated Party;
- (b) add to or amend any agreements evidencing or related to the Subordinated Debt in any manner which would be adverse to the Bank's rights under this Subordination Agreement;
- (c) institute involuntary bankruptcy or insolvency proceedings, or other proceedings or actions for the collection of debts of any kind against the Borrower/Guarantor; or
- (d) sell, assign, or transfer the Subordinated Debt or any part thereof unless such sale, assignment, transfer or other disposition is made subject to the terms of this Agreement.

5. Insolvency or Reorganization of Borrower/Guarantor.

(a) In the event that proceedings of any nature are filed under the Bankruptcy Code by or against the Borrower/Guarantor, or the Borrower/Guarantor is involved in insolvency, reorganization, or other proceedings of any kind for the relief of debtors in any jurisdiction, the Bank is hereby authorized to file a claim in any and all such proceedings, either in its own name or in the name of the Subordinated Party, for all amounts owing by the Borrower/Guarantor on the Subordinated Debt.

(b) The Bank is hereby authorized to collect and receive all payments and dividends that may be declared or become payable to the Subordinated Party in any such proceeding, to be applied to the payment of the Bank Debt until payment thereof in full. The Bank is hereby irrevocably appointed attorney for the Subordinated Party with the full power to act in the name of the Subordinated Party in all matters pertaining to such proceedings, including without limitation power to receive and receipt for the aforesaid payments and dividends, to accept or reject plans of reorganization, and to give consents or make objections. The Bank may exercise or fail to exercise such power at such times and in such manners as the Bank, in its sole discretion, deems appropriate.

6. Collateral. The Subordinated Party hereby expressly subordinates any rights of any kind it has in and to any of the Borrower/Guarantor's property, now owned or hereafter acquired (including, without limitation, any security interests, mortgages, pledges, and assignments) to any rights of the Bank in and to any of the Borrower/Guarantor's property. In the event that the Subordinated Party receives any payment, property, or other return with respect to any of its rights in the Borrower/Guarantor's property, the Subordinated Party shall hold the same in trust for, and immediately pay the same over to the Bank for application to the Bank Debt until such time as the Bank Debt shall have been satisfied in full.

7. Limitations on Indirect Payments. In the event of a default under the terms of the Bank Debt, so long as this Agreement remains in effect the Subordinated Party shall not, directly or indirectly, receive compensation or payments of any kind from the Borrower/Guarantor in any form (including, without limitation, salaries, commissions, bonuses, dividends, distributions, and stock redemptions).

Any compensation may be accrued on the Borrower/Guarantor's books, but such accruals shall be deemed to be part of the Subordinated Debt and shall be subordinated pursuant to the terms of this Agreement.

8. Continuing Agreement; Termination. This Agreement shall constitute a continuing Subordination Agreement irrespective of whether the Borrower/Guarantor may, at some time or times hereafter, pay all of its then existing Bank Debt, until this Agreement is terminated as described below. The Bank may, without notice to the Subordinated Party and without affecting this Agreement, lend monies, extend credit, forbear, release, sell, or exchange any property now or hereafter held by the Bank as security for the Bank Debt and make any and all other accommodations to, for, or with respect to the account of Borrower/Guarantor in reliance on this Agreement. This Agreement shall terminate when (i) the Bank expressly terminates this Agreement in writing or (ii) if the Borrower/Guarantor has no outstanding obligations under the Bank Debt and the Bank has no on-going commitments to lend to Borrower/Guarantor, written notice of revocation of this Agreement is delivered to the Bank by the Subordinated Party. Any such termination shall not affect this Agreement in relation to any Bank Debt then existing or any Bank Debt created thereafter pursuant to any previous commitments of the Bank to Borrower/Guarantor, or any extensions, refinancings, consolidations, modifications, or renewals of such Bank Debt or replacements therefor. As to all such Bank Debt and any consolidations, extensions, refinancings, modifications, renewals, or replacements thereof, this Agreement shall continue to be in effect until the same shall have been fully discharged (together with all interest, expenses, and obligations related thereto).

9. No Waiver. No course of dealing, delay or failure of the Bank to exercise any right, remedy, power or privilege hereunder or under any other agreement with the Subordinated Party or Borrower/Guarantor shall impair the same or be construed to be a waiver of the same or an acquiescence therein. No single or partial exercise of any right, remedy, power or privilege shall preclude other or further exercise thereof by the Bank against the Borrower/Guarantor or the Subordinated Party. All rights, remedies, powers, and privileges herein conferred upon the Bank shall be deemed cumulative and not exclusive of any others available.

10. Change in Borrower/Guarantor's Form of Business. This Agreement shall not be affected by a change in the name, structure, or form under which the Borrower/Guarantor or the Subordinated Party does business.

11. Subordinated Party Waives All Notices. The Subordinated Party hereby waives presentment and demand with respect to the Bank Debt and waives all notices to which the Subordinated Party might otherwise be entitled at law or in equity, including, without limitation, notice of creation of obligations, notice of the acceptance of the benefits hereof, notice of default in payment of the Bank Debt, and all other notices whatsoever.

12. Governing Law. This Agreement, together with all of the rights and obligations of the parties hereto, shall be construed, governed, and enforced in accordance with the laws of the State of New York. The Subordinated Party consents to service of process, which may be effected by certified mail, and jurisdiction in the courts of the State of New York and in the courts of the United States having jurisdiction thereof.

13. Entire Agreement. This Agreement contains the entire agreement of the parties. No written or oral understandings or agreements shall affect the right of the Bank hereunder unless the Bank otherwise expressly agrees in writing.

14. Successors. This Agreement shall be binding upon the Subordinated Party and its heirs, executors, legal representatives, successors and/or assigns, and shall inure to the benefit of the Bank and its successors and/or assigns.

15. Severability. Any partial invalidity of the provisions of this Agreement shall not invalidate the remaining portions hereof or thereof.

16. Trial by Jury. SUBORDINATED PARTY WAIVES TRIAL BY JURY OF ANY CLAIMS OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT, OR THE OBLIGATIONS, TO THE FULLEST EXTENT ALLOWED BY LAW.

Subordinated Party:

(X)

Date: April 11, 2001

BORROWER/GUARANTOR ACKNOWLEDGMENT

The Borrower/Guarantor, referred to in the above Subordination Agreement, warrants and represents to the Bank that:

- (a) the disclosure of Subordinated Debt shown in Section 2(a) of the Subordination Agreement is complete and accurate,
- (b) the Borrower/Guarantor will not incur additional obligations or liabilities, direct or indirect, contingent or otherwise, to the Subordinated Party without the prior written consent of the Bank,
- (c) the Borrower/Guarantor will not give any security or other collateral to the Subordinated Party not already held by it,
- (d) the Borrower/Guarantor will not amend any agreements evidencing or related to the Subordinated Debt in any manner which would be adverse to the Bank's rights under the Subordination Agreement, and the Borrower/Guarantor will not give the Subordinated Party any new agreements or instruments evidencing the Subordinated Debt,
- (e) the Borrower/Guarantor will not make any payment or give any compensation of any kind to the Subordinated Party except as specifically allowed by Sections 3 and 7 of the Subordination Agreement, and
- (f) upon taking of any action or institution of any proceeding by the Subordinated Party to collect the Subordinated Debt, the Borrower/Guarantor will give the Bank immediate written notice of same and will fully cooperate with the Bank in taking any necessary action to assure that the Bank's rights under the Subordination Agreement are fully protected.

Borrower/Guarantor Name: _____

Signature & Title: _____

By _____

Date: _____

ESCROW AGREEMENT

_____ To _____
Premises: _____

WHEREAS, the closing for the sale of the premises located at _____, New York is scheduled for _____, and

WHEREAS, it has come to the attention of the seller that the roofed-over outdoor bar that has been added to the northerly side of the dwelling requires a Certificate of Completion and/or Occupancy.

NOW, therefore, it is understood and agreed to by the seller and the purchaser as follows:

1. The seller and/or seller's attorney will take all necessary steps in order to provide purchaser with a Certificate of Completion and/or Occupancy for the roofed-over outdoor bar on or before _____, 2008.
2. The seller's attorney will hold the sum of \$_____ in escrow until such time as an original Certificate of Completion and/or Occupancy for the roofed-over outdoor bar is received by the purchaser. Once the Certificate of Completion and/or Occupancy is received by purchaser, escrow monies may immediately be released. Seller's liability shall in no way be limited to the amount held in escrow. Seller shall be fully responsible for any costs and/or expenses necessary to obtain the Certificate of Completion and/or Occupancy even if those sums shall exceed the amount held in escrow.
3. Funds held in escrow for the faithful performance of the seller's duty in accordance with the terms of the contract of sale shall not be used or released until such time as purchaser has received an original Certificate of Completion and/or Occupancy.
4. In the event seller and/or escrowee and/or seller's agents fail to obtain the Certificate of Completion and/or Occupancy in the time specified above, seller admits that this shall be a willful breach of the contract of sale and seller and escrowee shall immediately turnover all funds in escrow to purchaser and be fully responsible for any and all costs and expenses of any kind whatsoever incurred by purchaser, including reasonable legal fees in obtaining the Certificate of Completion or pursuing seller and/or escrowee for any costs incurred.
5. The contract and this agreement shall survive closing in all respects until such time as Certificate of Completion and/or Occupancy shall be given to the purchaser.
6. Seller and escrowee state that in the event it is necessary to commence legal action in order to enforce this agreement or any of the terms of the contract of sale, action shall be brought in Nassau and/or Suffolk County in the State of New York and escrowee is authorized to accept service on behalf of the seller.

7 Seller states that his new permanent address after this closing will be _____

8 Purchaser agrees to provide reasonable access to the premises to members of the Building Department and/or authorized representatives of seller to perform work upon reasonable notice and at no expense to purchaser.

9 This escrow is solely limited for the purposes of seller obtaining the Certificate of Completion and/or Occupancy and is not being held for any other purposes.

10 This agreement shall survive closing.

Purchaser

Purchaser

Seller

Seller

as Escrowee